



Federal Register

**Friday,
March 19, 2010**

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****[Docket FAR 2010–0076, Sequence 1]****Federal Acquisition Regulation;
Federal Acquisition Circular 2005–39;
Introduction****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),and National Aeronautics and Space
Administration (NASA).**ACTION:** Summary presentation of rules.**SUMMARY:** This document summarizes
the Federal Acquisition Regulation
(FAR) rules agreed to by the Civilian
Agency Acquisition Council and the
Defense Acquisition Regulations
Council (Councils) in this Federal
Acquisition Circular (FAC) 2005–39. A
companion document, the *Small Entity
Compliance Guide* (SECG), follows this
FAC. The FAC, including the SECG, is
available via the Internet at [http://
www.regulations.gov](http://www.regulations.gov).**DATES:** For effective dates and comment
dates, see separate documents, which
follow.**FOR FURTHER INFORMATION CONTACT:** The
analyst whose name appears in the table
below in relation to each FAR case.
Please cite FAC 2005–39 and the
specific FAR case numbers. For
information pertaining to status or
publication schedules, contact the FAR
Secretariat at (202) 501–4755.**LIST OF RULES IN FAC 2005–39**

Item	Subject	FAR case	Analyst
I	Extend Use of Simplified Acquisition Procedures for Certain Commercial Items	2009–035	Jackson.
II	Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items.	2008–012	Chambers.
III	Use of Standard Form 26 - Award/Contract	2008–040	Jackson.
IV	Enhanced Competition for Task- and Delivery-Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act.	2008–006	Clark.
V	Trade Agreements—Costa Rica, Oman, and Peru	2008–036	Sakalos.
VI	Payments Under Fixed-Price Architect-Engineer Contracts	2008–015	Neurauter.
VII	Technical Amendment		

SUPPLEMENTARY INFORMATION:Summaries for each FAR rule follow.
For the actual revisions and/or
amendments made by these FAR cases,
refer to the specific item number and
subject set forth in the documents
following these item summaries.FAC 2005–39 amends the FAR as
specified below:**Item I—Extend Use of Simplified
Acquisition Procedures for Certain
Commercial Items (FAR Case 2009–035)**This final rule amends the FAR to
implement section 816 of the National
Defense Authorization Act (NDAA) for
Fiscal Year (FY) 2010. The rule extends
for two more years the commercial
items test program in FAR subpart 13.5.
The program was to expire January 1,
2010.**Item II—Clarification of Submission of
Cost or Pricing Data on Non-
Commercial Modifications of
Commercial Items (FAR Case 2008–012)**This final rule adopts, with minor
changes, the interim rule published in
the **Federal Register** at 74 FR 11826 on
March 19, 2009. The interim rule
amended the FAR to implement section
814 of the NDAA for FY 2008. Section
814 requires the harmonization of the
threshold for cost or pricing data on
non-commercial modifications of
commercial items with the Truth in
Negotiations Act (TINA) threshold forcost or pricing data. By linking the
threshold for cost or pricing data on
non-commercial modifications of
commercial items with the TINA
threshold at FAR 15.403–4, whenever
the TINA threshold is adjusted the
threshold for cost or pricing data on
non-commercial modifications of
commercial items will be automatically
adjusted as well.**Item III—Use of Standard Form 26 -
Award/Contract (FAR Case 2008–040)**This final rule modifies the
instructions for use of the Standard
Form 26, Award/Contract, at FAR
subparts 15.5 and 53.2 to clarify that
block 18 of the form should not be used
to award a negotiated procurement. No
change is made to existing policy or
procedures.**Item IV—Enhanced Competition for
Task- and Delivery-Order Contracts—
Section 843 of the Fiscal Year 2008
National Defense Authorization Act
(FAR Case 2008–006)**This final rule adopts, with changes,
the interim rule published in the
Federal Register at 73 FR 54008 on
September 17, 2008. The interim rule
amended FAR subpart 16.5 to
implement section 843 of the NDAA for
FY 2008. The provisions of section 843
include (1) Limitation on single award
task- or delivery-order contracts greater
than \$100 million; (2) Enhancedcompetition for task and delivery orders
in excess of \$5 million; and (3)
Restriction on protests in connection
with issuance or proposed issuance of a
task or delivery order except for a
protest on orders on the grounds that
the order increases the scope, period, or
maximum value of the contract under
which the order is issued, or a protest
of an order valued in excess of \$10
million. Several changes are made to the
FAR as result of public comments on
the interim rule. FAR 16.503 is
amended to clarify that a requirements
contract is awarded to one contractor.
FAR 16.504(c)(1)(ii)(D)(3) is amended to
clarify that the agency-head
determination to award a single-award
task- or delivery-order contract over
\$100 million does not apply to an
architect-engineer task- or delivery-
order contract awarded pursuant to FAR
subpart 36.6. The Councils also revised
FAR 16.504(c)(1)(ii)(D)(3) to state that
the requirement for a determination for
a single-award contract greater than
\$100 million is in addition to any
applicable requirements of FAR subpart
6.3. This change is made to clarify that
the determination for a single award
task- or delivery-order contract greater
than \$100 million is required in
addition to the Justification and
Approval (J&A) required by FAR subpart
6.3 when a procurement will be

conducted as other than full and open competition.

Item V—Trade Agreements—Costa Rica, Oman, and Peru (FAR Case 2008–036)

The Councils have adopted as final, without change, an interim rule published in the **Federal Register** at 74 FR 28426 on June 15, 2009, amending the FAR to implement the Dominican Republic—Central America—United States Free Trade Agreement with respect to Costa Rica, the United States–Oman Free Trade Agreement, and the United States–Peru Trade Promotion Agreement.

This final rule allows contracting officers to purchase the goods and services of Costa Rica, Oman, and Peru without application of the Buy American Act if the acquisition is subject to the applicable trade agreements.

Item VI—Payments Under Fixed-Price Architect-Engineer Contracts (FAR Case 2008–015)

This rule amends FAR 52.232–10, Payments under Fixed-Price Architect-Engineer Contracts, to revise and clarify the retainage requirements. The contracting officer can withhold up to 10 percent of the payment due in any billing period when the contracting officer determines that such a withholding is necessary to protect the Government's interest and ensure satisfactory completion of the contract. However, withholding the entire 10 percent is not required, and no withholding is required if the contractor's performance has been satisfactory. The changes clarify that retainage is optional and any amounts retained should not be held over beyond the satisfactory completion of the instant contract.

Item VII—Technical Amendment

An editorial change has been made at FAR 14.202–4(a)(3).

Dated: March 15, 2010.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–39 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–39 is effective March 19, 2010, except for Items III, IV, and VI, which are effective April 19, 2010.

Dated: March 12, 2010.

Linda W. Neilson,

Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).

Dated: March 11, 2010.

Rodney P. Lantier,

Acting Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: March 8, 2010.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2010–5984 Filed 3–18–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Part 13

[FAC 2005–39; FAR Case 2009–035; Item I; Docket 2010–0080, Sequence 1]

RIN 9000–AL52

Federal Acquisition Regulation; FAR Case 2009–035, Extend Use of Simplified Acquisition Procedures for Certain Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise subpart 13.5, “Test Program for Certain Commercial Items,” to implement section 816 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub. L. 111–84). The rule extends the program for two more years. The program was to expire January 1, 2010.

DATES: Effective Date: March 19, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–39, FAR case 2009–035.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to revise section 13.500(d) to implement section 816 of the NDAA for FY 2010. Section 816 of the NDAA for FY 2010 strikes out “2010” in subsection (e) of section 4202 of the Clinger-Cohen Act of 1996 (Division D of Pub. L. 104–106, 10 U.S.C. 2304 note) as amended by section 822 of the NDAA for FY 2008 (Pub. L. 110–181) and inserts “2012.” FAR subpart 13.5 authorizes as a test program, the use of simplified procedures for the acquisition of certain commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5.5 million, (\$11 million for acquisitions described in FAR 13.500(e)) including options, if the contracting officer can reasonably expect that offers will include commercial items. FAR subpart 13.500(d) authorizes the contracting officer to issue solicitations under this subpart until January 1, 2010. This final rule extends this authority to January 1, 2012.

B. Decision to Issue a Final Rule

This case implements section 816 of the NDAA for FY 2010. It merely extends the end date of the Commercial Item Test Program from January 1, 2010, to January 1, 2012. Therefore, because there is no change in policy or procedure, the Councils determined to issue a final rule without comment.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required.

The Councils will consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–39, FAR Case 2009–035) in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management