

FEDERAL ACQUISITION CIRCULAR

March 19, 2009

Number 2005-31 (Looseleaf correction)

Since the original issuance of the FAC 2005-31 looseleaf version, the FAC 2005-32 looseleaf version was issued. Subsequently, replacement looseleaf pages must now be issued. The replacement pages are reissued in this looseleaf correction.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-31 are effective March 19, 2009, except for Items I and III which are effective April 20, 2009.

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FAC 2005-31 (LOOSELEAF CORRECTION) FILING INSTRUCTIONS

NOTE: The following replacement pages reflect FAR 2005-31 amendments. Please file these pages after filing all pages from FAC 2005-31 and FAC 2005-32. The effective date is April 20, 2009.

Remove Pages

1.1-5 and 1.1-6

52.2-39 and 52.2-40

Insert Pages

1.1-5 and 1.1-6

52.2-39 and 52.2-40

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| 52.219-21 | 9000-0100 | 52.228-2 | 9000-0045 |
| 52.219-22 | 9000-0150 | 52.228-12 | 9000-0135 |
| 52.219-23 | 9000-0150 | 52.228-13 | 9000-0045 |
| 52.219-25 | 9000-0150 | 52.228-15 | 9000-0045 |
| 52.219-28 | 9000-0163 | 52.228-16 | 9000-0045 |
| 52.222-2 | 9000-0065 | 52.229-2 | 9000-0059 |
| 52.222-4 | 1215-0119 | 52.230-6 | 9000-0129 |
| 52.222-6 | 1215-0140 | 52.232-1 | 9000-0070 |
| 52.222-8 | 1215-0149 and | 52.232-2 | 9000-0070 |
| | 1215-0017 | 52.232-3 | 9000-0070 |
| 52.222-11 | 9000-0014 | 52.232-4 | 9000-0070 |
| 52.222-18 | 9000-0127 | 52.232-5 | 9000-0070 |
| 52.222-21 | 1215-0072 | 52.232-6 | 9000-0070 |
| 52.222-22 | 1215-0072 | 52.232-7 | 9000-0070 |
| 52.222-23 | 1215-0072 | 52.232-8 | 9000-0070 |
| 52.222-25 | 1215-0072 | 52.232-9 | 9000-0070 |
| 52.222-26 | 1215-0072 | 52.232-10 | 9000-0070 |
| 52.222-27 | 1215-0072 | 52.232-11 | 9000-0070 |
| 52.222-32 | 9000-0154 | 52.232-12 | 9000-0073 |
| 52.222-35 | 1215-0072 | 52.232-13 | 9000-0010 |
| 52.222-36 | 1215-0072 | 52.232-14 | 9000-0010 |
| 52.222-41 | 1215-0017 and | 52.232-15 | 9000-0010 |
| | 1215-0150 | 52.232-16 | 9000-0010 |
| 52.222-46 | 9000-0066 | 52.232-20 | 9000-0074 |
| 52.223-4 | 9000-0134 | 52.232-22 | 9000-0074 |
| 52.223-5 | 9000-0147 | 52.232-27 | 9000-0102 |
| 52.223-6(b)(5) | 9000-0101 | 52.232-29 | 9000-0138 |
| 52.223-7 | 9000-0107 | 52.232-30 | 9000-0138 |
| 52.223-9 | 9000-0134 | 52.232-31 | 9000-0138 |
| 52.223-13 | 9000-0139 | 52.232-32 | 9000-0138 |
| 52.223-14 | 9000-0139 | 52.233-1 | 9000-0035 |
| 52.225-2 | 9000-0024 | 52.234-1 | 9000-0133 |
| 52.225-4 | 9000-0130 | 52.236-5 | 9000-0062 |
| 52.225-6 | 9000-0025 | 52.236-13 | 1220-0029 and |
| 52.225-8 | 9000-0022 | | 9000-0060 |
| 52.225-9 | 9000-0141 | 52.236-15 | 9000-0058 |
| 52.225-11 | 9000-0141 | 52.236-19 | 9000-0064 |
| 52.225-18 | 9000-0161 | 52.241-1 | 9000-0126 |
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| 52.227-14 | 9000-0090 | 52.241-13 | 9000-0124 |
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| 52.227-21 | 9000-0090 | 52.245-1 | 9000-0075 |
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| 52.246-5 | 9000-0077 | SF 1404 | 9000-0011 |
| 52.246-6 | 9000-0077 | SF 1405 | 9000-0011 |
| 52.246-7 | 9000-0077 | SF 1406 | 9000-0011 |
| 52.246-8 | 9000-0077 | SF 1407 | 9000-0011 |
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| 52.246-15 | 9000-0077 | SF 1416 | 9000-0045 |
| 52.247-2 | 9000-0053 | SF 1418 | 9000-0045 |
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| 52.247-51 | 9000-0057 | | |
| 52.247-53 | 9000-0055 | | |
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| 52.247-68 | 9000-0056 | | |
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1.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act ([41 U.S.C. 425](#)), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104-106), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

(a) The certification requirement is specifically imposed by statute; or

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

(a) *Words and terms.* Definitions in [Part 2](#) apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see [1.102-4\(b\)](#)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the

pose. This paragraph does not give the Government any right to audit the Contractor’s records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

**52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—
Commercial Items.**

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO
IMPLEMENT STATUTES OR EXECUTIVE ORDERS—
COMMERCIAL ITEMS (APR 2009)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).
— Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).
- (2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).
- (3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

- (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).
- (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).
- (3) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5).
- (4) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (MAR 2009) (Pub. L. 111-5).
- (5) [52.219-3](#), Notice of Total HUBZone Set-Aside (JAN 1999) ([15 U.S.C. 657a](#)).
- (6) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).
- (7) [Reserved]
- (8)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

- (ii) Alternate I (OCT 1995) of [52.219-6](#).
- (iii) Alternate II (MAR 2004) of [52.219-6](#).
- (9)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).
- (ii) Alternate I (OCT 1995) of [52.219-7](#).
- (iii) Alternate II (MAR 2004) of [52.219-7](#).
- (10) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).
- (11)(i) [52.219-9](#), Small Business Subcontracting Plan (APR 2008) ([15 U.S.C. 637\(d\)\(4\)](#)).
- (ii) Alternate I (OCT 2001) of [52.219-9](#).
- (iii) Alternate II (OCT 2001) of [52.219-9](#).
- (12) [52.219-14](#), Limitations on Subcontracting (DEC 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).
- (13) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
- (14)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- (ii) Alternate I (JUNE 2003) of [52.219-23](#).
- (15) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- (16) [52.219-26](#), Small Disadvantaged Business Participation Program— Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- (17) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) ([15 U.S.C. 657 f](#)).
- (18) [52.219-28](#), Post Award Small Business Program Rerepresentation (APR 2009) ([15 U.S.C. 632\(a\)\(2\)](#)).
- (19) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).
- (20) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (FEB 2008) (E.O. 13126).
- (21) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).
- (22) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).
- (23) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).
- (24) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUN 1998) ([29 U.S.C. 793](#)).
- (25) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).
- (26) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

___ (27) [52.222-54](#), Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

___ (28)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (29) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

___ (30)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

___ (ii) Alternate I (DEC 2007) of [52.223-16](#).

___ (31) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)).

___ (32)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (FEB 2009) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, Pub. L. 108-77, 108-78, 108-286, 109-53 and 109-169).

___ (ii) Alternate I (JAN 2004) of [52.225-3](#).

___ (iii) Alternate II (JAN 2004) of [52.225-3](#).

___ (33) [52.225-5](#), Trade Agreements (MAR 2009) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

___ (34) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

___ (35) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

___ (36) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

___ (37) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (38) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (39) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

___ (40) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

___ (41) [52.232-36](#), Payment by Third Party (MAY 1999) ([31 U.S.C. 3332](#)).

___ (42) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

___ (43)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

___ (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [*Contracting Officer check as appropriate.*]

___ (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

___ (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (NOV 2006) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (FEB 2002) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

___ (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

___ (7) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247).

___ (8) [52.237-11](#), Accepting and Dispensing of \$1 Coin (SEPT 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to