

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket No. FAR 2015–0051, Sequence No. 5]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2005–85;
Introduction**

AGENCY: Department of Defense (DoD),
General Services Administration (GSA),

and National Aeronautics and Space
Administration (NASA).

ACTION: Summary presentation of
interim and final 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) 2005–85. 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 see the
separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The
analyst whose name appears in the table
below in relation to the FAR case.
Please cite FAC 2005–85 and the
specific FAR case number. For
information pertaining to status or
publication schedules, contact the
Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–85

Item	Subject	FAR Case	Analyst
I	Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction (Interim).	2015–011	Davis.
II	Further Amendments to Equal Employment Opportunity	2015–013	Loeb.
III	Updating Federal Contractor Reporting of Veterans' Employment (Interim)	2015–036	Loeb.
IV	Pilot Program for Enhancement of Contractor Employee Whistleblower Protections ..	2013–015	Davis.
V	Retention Periods	2015–009	Glover.
VI	Establishing a Minimum Wage for Contractors	2015–003	Loeb.
VII	Technical Amendment.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow.
For the actual revisions and/or
amendments made by these rules, refer
to the specific item numbers and
subjects set forth in the documents
following these item summaries. FAC
2005–85 amends the FAR as follows:

**Item I—Prohibition on Contracting
With Corporations With Delinquent
Taxes or a Felony Conviction (FAR
Case 2015–011) (Interim)**

This interim rule amends the FAR to
implement sections of the Consolidated
and Further Continuing Appropriations
Act, 2015, to prohibit the Federal
Government from entering into a
contract with any corporation having a
delinquent Federal tax liability or a
felony conviction under any Federal
law, unless an agency has considered
suspension or debarment of the
corporation and has made a
determination that this further action is
not necessary to protect the interests of
the Government.

This interim rule has no significant
impact on the Government and
contractors, including small business
entities.

**Item II—Further Amendments to Equal
Employment Opportunity (FAR Case
2015–013)**

DoD, GSA, and NASA are issuing a
final rule adopting an interim rule
published April 10, 2015, without

change. The interim rule amended the
FAR to implement Executive Order
(E.O.) 13672, entitled “Further
Amendments to Executive Order 11478,
Equal Employment Opportunity in the
Federal Government, and Executive
Order 11246, Equal Employment
Opportunity”. E.O. 13672 was signed
July 21, 2014.

E.O. 11246, dated September 24,
1965, established requirements for non-
discriminatory practices in hiring and
employment for Federal contractors and
subcontractors. The bases of
discrimination prohibited by E.O. 11246
are race, color, religion, sex, and
national origin. E.O. 13672 adds sexual
orientation and gender identity to the
prohibited bases of discrimination
established by E.O. 11246. There is no
significant impact on small entities.

**Item III—Updating Federal Contractor
Reporting of Veterans' Employment
(FAR Case 2015–036) (Interim)**

DoD, GSA, and NASA are issuing an
interim rule amending the FAR to
implement a final rule issued by the
Department of Labor's Veterans'
Employment and Training Service
(VETS) that revised the regulations at 41
CFR part 61 implementing the reporting
requirements under the Vietnam Era
Veterans' Readjustment Assistance Act,
as amended (VEVRAA) and the Jobs for
Veterans Act (JVA) (Pub. L. 107–288).
VEVRAA requires Federal contractors
and subcontractors to annually report

on the total number of their employees
who belong to the categories of veterans
protected under VEVRAA, as amended
by the JVA, and the total number of
those protected veterans who were hired
during the period covered by the report.
The VETS rule requires contractors and
subcontractors to comply with its
revised reporting requirements using the
new Form VETS–4212, in lieu of the
VETS–100 and VETS–100A, beginning
with the annual report filed in 2015.

There is no significant impact on
small entities imposed by the FAR rule.

**Item IV—Pilot Program for
Enhancement of Contractor Employee
Whistleblower Protections (FAR Case
2013–015)**

This final rule amends the FAR to
implement a statutory pilot program
enhancing whistleblower protections for
contractor employees at FAR subpart
3.9. An interim rule was published
September 30, 2013. The interim rule
created a new FAR section 3.908 to be
used by title 41 agencies through
January 1, 2017.

The four-year pilot program is
mandated by section 828, entitled “Pilot
Program for Enhancement of Contractor
Employee Whistleblower Protections,”
of the National Defense Authorization
Act (NDAA) for Fiscal Year (FY) 2013
(Pub. L. 112–239, enacted January 2,
2013).

This rule has no significant impact on
small business concerns.

Item V—Retention Periods (FAR Case 2015–009)

This final rule amends the FAR by updating the Government file retention periods to conform with the retention periods in the National Archives and Records Administration (NARA) General Records Schedule (GRS). Language is also added to instruct agencies that require a shorter retention period for certain records to request approval from NARA through the agency's record officer. This rule change does not place any new requirements on small entities; the only change is the timeframe for retention by the Government of Government records.

Item VI—Establishing a Minimum Wage for Contractors (FAR Case 2015–003)

DoD, GSA, and NASA are issuing a final rule adopting the interim rule published December 15, 2014, with change. The interim rule amended the FAR to implement Executive Order 13658 and a Department of Labor final rule issued on October 7, 2014, both entitled “Establishing a Minimum Wage for Contractors,” which established a new minimum wage for covered service and construction contracts of \$10.10 per hour, as of January 1, 2015. The Executive Order minimum wage will be adjusted annually, by the Department of Labor. Contracting officers will include a clause in covered contracts and will adjust contract prices for the annual adjustments in the Executive Order minimum wage. Contractors shall consider any subcontractor request, including requests by small businesses subcontractors, for a subcontract price adjustment due to the annual adjustment in the Executive Order minimum wage.

There is no significant impact on small entities imposed by the FAR rule.

Item VII—Technical Amendment

Editorial change is made at FAR 1.106.

Dated: November 20, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005–85 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 2005–85 is effective December 4, 2015 except for item I and III which are

effective February 26, 2016, and item V which is effective January 4, 2016.

Dated: November 23, 2015.

Claire M. Grady,

Director, Defense Procurement and Acquisition Policy.

Dated: November 24, 2015.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: November 20, 2015.

William P. McNally,

Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 4, 9, 12, and 52**

[FAC 2005–85; FAR Case 2015–011; Item No. I; Docket No. 2015–0011; Sequence No. 1]

RIN 9000–AN05

Federal Acquisition Regulation: Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction

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

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement sections of the Consolidated and Further Continuing Appropriations Act, 2015, to prohibit the Federal Government from entering into a contract with any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

DATES: *Effective date:* February 26, 2016.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat on or before February 2, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005–85, FAR Case 2015–011, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2015–011”. Select the link “Comment Now” that corresponds with “FAR Case 2015–011”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2015–011” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite FAC 2005–85, FAR Case 2015–011, Prohibition on Contracting with Corporation with Delinquent Taxes or a Felony Conviction, in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three Days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–85, FAR Case 2015–011.

SUPPLEMENTARY INFORMATION:**I. Background**

This interim rule amends the FAR to implement sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and section 523 of Division B of the same act.

A. Representation

This rule requires that all offerors responding to Federal solicitations make a representation regarding whether the offeror is a corporation with a delinquent tax liability or a felony conviction under Federal law, as required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) (and similar provisions in subsequent appropriations acts).