

enforcement of section 106, the FAR will require each offeror to complete a representation that the offeror does not export certain sensitive technology to the government of Iran or any entities or individuals owned or controlled by or acting on behalf or at the direction of the government of Iran. This rule will have little effect on domestic small business concerns, because such dealings with Iran are already generally prohibited in the United States.

**Item VI—Set-Asides for Small Business (FAR Case 2011–024) (Interim)**

This interim rule amends the FAR to implement section 1331 of Pub. L. 111–240, the Small Business Jobs Act of 2010, providing agencies with the legal authority to set aside or reserve multiple-award contracts and orders.

Specifically, section 1331 authorizes agencies to (1) Set aside part or parts of multiple-award contracts; (2) set aside orders placed against multiple-award contracts; and (3) reserve one or more multiple-award contracts for small business concerns that are awarded using full and open competition.

The interim rule gives agencies an additional procurement tool to increase opportunities for small businesses to compete in the Federal marketplace.

**Item VII—Sudan Waiver Process (FAR Case 2009–041)**

This final rule amends the FAR to revise section 25.702, Prohibition on contracting with entities that conduct restricted business operations in Sudan. The rule adds specific criteria, including foreign policy aspects, that an agency must address when applying to the President or his appointed designee for a waiver of the prohibition on awarding a contract to a contractor that conducts restricted business operations in Sudan, in accordance with the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110–174). The rule also describes the consultation process that will be used by the Office of Federal Procurement Policy in support of the waiver review. The rule does not impose any requirements on small businesses.

**Item VIII—Successor Entities to the Netherlands Antilles (FAR Case 2011–014)**

This final rule amends FAR parts 25 and 52 to revise the definitions of “Caribbean Basin country” and “designated country” due to the change in status of the islands that comprised the Netherlands Antilles. On October 10, 2010, the Netherlands Antilles dissolved into five separate successor

entities. The rule does not impose any requirements on small businesses.

**Item IX—Labor Relations Costs (FAR Case 2009–006)**

This final rule amends the FAR to implement Executive Order (E.O.) 13494, Economy in Government Contracting, issued on January 30, 2009, and amended on October 30, 2009. This E.O. treats as unallowable the costs of any activities undertaken to persuade employees, whether employees of the recipient of Federal disbursements or of any other entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employee’s own choosing.

**Item X—Technical Amendments**

Editorial changes are made at FAR 1.106, 4.604, and 8.501.

Dated: October 21, 2011.

**Laura Auletta,**

*Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Federal Acquisition Circular (FAC) 2005–54 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 2005–54 is effective November 2, 2011, except for Items II, VII, and IX which are effective December 2, 2011.

Dated: October 20, 2011.

**Richard Ginman,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: October 21, 2011.

**Mindy S. Connolly, CPCM,**

*Chief Acquisition Officer U.S. General Services Administration.*

Dated: October 20, 2011.

**Leigh Pomponio,**

*Procurement Analyst, National Aeronautics and Space Administration.*

[FR Doc. 2011–27778 Filed 11–1–11; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 2, 22, and 52**

[FAC 2005–54; FAR Case 2010–006; Item I; Docket 2010–0106; Sequence 1]

RIN 9000–AL76

**Federal Acquisition Regulation; Notification of Employee Rights Under the National Labor Relations Act**

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Department of Labor (DOL) regulations that implemented the Executive Order (E.O.), Notification of Employee Rights Under Federal Labor Laws.

**DATES:** *Effective Date:* November 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Clare McFadden, Procurement Analyst, at (202) 501–0044, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–54, FAR Case 2010–006.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 77723 on December 13, 2010, to implement E.O. 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the DOL. The E.O. requires contractors to display a notice for employees of their rights under Federal labor laws, and the DOL has determined that the notice shall include employee rights under the National Labor Relations Act. Public comments were due on or before February 11, 2011. Three respondents submitted nine comments on the interim rule.

**II. Discussion and Analysis of the Public Comments**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the

development of the final rule. A discussion of the comments and the changes made to the rule as the result of those comments are provided as follows:

#### A. General Comments

*Comment:* One respondent stated support for the interim rule and urged that a final rule be adopted as quickly as possible. The respondent noted that the need to facilitate timely implementation of the E.O. constitutes a compelling reason for issuance of an interim rule.

*Response:* An interim rule was published to facilitate the implementation of the E.O., and this rule is being converted to a final rule, herein.

*Comment:* Another respondent referred to the interim rule as an "invasion of privacy," comparing this to a requirement to post the Constitution, Bill of Rights, or tax laws.

*Response:* The comment is noted but does not warrant a change to the FAR. The FAR is implementing a requirement of the E.O. and the DOL regulations. The E.O. is premised on the policy that it is beneficial to the Government to rely on contractors whose employees are informed of their rights under Federal labor laws.

#### B. Comment on the FAR Text

*Comment:* A respondent recommended deleting the phrase at FAR 22.1605(a) "including acquisitions for commercial items and commercially available off-the-shelf items."

*Response:* DOL is the regulatory agency with primary responsibility for implementation of the E.O. The DOL final rule does not provide an exception for the acquisition of commercial items, including commercially available off-the-shelf items. Therefore, the FAR rule must be consistent with the DOL rule in its application to commercial items.

#### C. Comments on FAR Clause 52.212-5

*Comment:* A respondent noted that the clause should be listed as subsection (28), not (27), at FAR 52.212-5(b).

*Response:* The correction to the number has been made.

*Comment:* A respondent requested the deletion of the phrase "flow down required in accordance with paragraph (f) of FAR clause 52.222-40" at 52.212-5(e)(1)(vii) and 52.212-5 Alternate II(e)(1)(ii)(G).

*Response:* As noted earlier (see response at section II.B. above), the FAR is implementing the DOL final rule. The DOL rule very specifically set the requirements for flow down of the requirement for posting the National

Labor Relations Act poster to subcontracts at all tiers that exceed \$10,000.

#### D. Comments on FAR Clause 52.222-40

*Comment:* A respondent requested clarification of the clause at FAR 52.222-40 so that it is obvious whether contractors and subcontractors are required to use the DOL poster or have permission to create a company-specific poster, as long as the latter meets the DOL's size, form, and content requirements.

*Response:* The language at FAR 22.1602(a) and at FAR 52.222-40(a) indicates that an employer does not have to use the DOL poster but can use its own poster as long as it includes the requisite information—the DOL's size, form, and content requirements.

*Comment:* A respondent suggested revising FAR 52.222-40(a)(1) to read as follows:

"Physical posting of the employee notice shall be in conspicuous places in and about the plants and offices of contractors and subcontractors, in the languages employees speak, so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract."

The respondent stated that the following language at FAR 52.222-40(a), regarding where the poster must be posted and what languages must be used in the poster, is redundant:

"\* \* \* in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2 (d) and (f)."

*Response:* DOL's final rule was published in the **Federal Register** at 75 FR 28368 on May 20, 2010, and it incorporated that agency's requirements for implementation of the E.O. at 29 CFR 471. The FAR is being updated to incorporate the DOL requirements into corresponding sections of the FAR. Since DOL has the primary responsibility for implementation of the E.O., it is not appropriate to make any substantive change in the FAR clause.

#### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule implements the Department of Labor's (DOL) final rule that implemented E.O. 13496, Notification of Employee Rights Under Federal Labor Laws. This E.O. requires contractors to display a notice to employees of their rights under Federal labor laws, and the DOL has determined that the notice shall include employee rights under the National Labor Relations Act. DOL certified in its final rule (published in the **Federal Register** at 75 FR 28368 on May 20, 2010, with an effective date of June 21, 2010) that its rule would not have a significant economic impact on a substantial number of small entities. After reviewing DOL's certification, DoD, GSA, and NASA concurred that no regulatory flexibility analysis was needed. DoD, GSA, and NASA did not receive comments from small entities in response to the invitation to do so included in the FAR interim rule that published in the **Federal Register** at 75 FR 77723 on December 13, 2010.

#### V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Parts 1, 2, 22, and 52

Government procurement.

Dated: October 21, 2011.

**Laura Auletta,**

*Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 1, 2, 22, and 52, which was published in the **Federal Register** at 75 FR 77723 on December 13, 2010, is adopted as a final rule without change.

[FR Doc. 2011-27779 Filed 11-1-11; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1, 3, 12, and 52

[FAC 2005-54; FAR Case 2008-025; Item II; Docket 2009-0039, Sequence 1]

RIN 9000-AL46

#### Federal Acquisition Regulation; Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to address personal conflicts of interest by employees of Government contractors as required by statute.

**DATES:** *Effective Date:* December 2, 2011.

*Applicability Date:* Except for contracts, including task or delivery orders, for the acquisition of commercial items, this rule applies to—

- Contracts issued on or after the effective date of this rule; and
- Task or delivery orders awarded on or after the effective date of the rule, regardless of whether the contracts, pursuant to which such task or delivery orders are awarded, were awarded before, on, or after the effective date of this rule.

Contracting officers shall modify, on a bilateral basis, in accordance with FAR 1.108(d)(3), existing task- or delivery-order contracts to include the FAR clause for future orders. In the event that a contractor refuses to accept such

a modification, the contractor will not be eligible to receive further orders under such contract.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Robinson, Procurement Analyst, at (202) 501-2658, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-54, FAR Case 2008-025.

#### SUPPLEMENTARY INFORMATION:

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#### I. Background

Section 841(a) of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110-417), now codified at 41 U.S.C. 2303, requires that the Office of Federal Procurement Policy (OFPP) develop policy to prevent personal conflicts of interest by contractor employees performing acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal agency or department. The NDAA also requires OFPP to develop a personal conflicts-of-interest clause for inclusion in solicitations, contracts, task orders, and delivery orders. To address the requirements of section 841(a) in the most effective manner possible, OFPP collaborated with DoD, GSA, and NASA on this case to develop regulatory guidance, including a new subpart under FAR part 3, and a new clause for contracting officers to use in contracts to prevent personal conflicts of interest for contractor employees performing acquisition functions for, or on behalf of, a Federal agency or department.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 74 FR 58584 on November 13, 2009. OFPP and DoD, GSA, and NASA proposed a policy that would require each contractor that has employees performing acquisition functions closely associated with inherently governmental functions to identify and prevent personal conflicts of interest for such employees. In addition, such contractors would be required to

prohibit covered employees with access to non-public Government information from using it for personal gain. The proposed rule also made contractors responsible for—

- Having procedures to screen for potential personal conflicts of interest;
- Informing covered employees of their obligations with regard to these policies;
- Maintaining effective oversight to verify compliance;
- Reporting any personal conflicts-of-interest violations to the contracting officer; and
- Taking appropriate disciplinary action with employees who fail to comply with these policies.

Comments were received from 19 respondents; these are analyzed in the following sections.

#### II. Discussion and Analysis of the Public Comments

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have reviewed the public comments in development of the final rule. As a result of this review, the Councils have incorporated some changes in the final rule, including the following more significant changes:

- Revised the definition of “covered employee” to clarify applicability to subcontracts.
- Revised the contracting officer procedures at FAR 3.1103(a)(1) and (a)(3), and (b)(3).
- Revised the discussion of violations at FAR 3.1105.
- Added a new paragraph FAR 3.1106(c) to provide additional clarification on use of FAR clause 52.203-16 when contracting with a self-employed individual.
- Amended 12.503(a) to clarify that the statute does not apply to contracts for the acquisition of commercial items.
- Revised the clause at FAR 52.203-16 by—
  - Clarifying the financial disclosure requirements in paragraph (b)(1), including deletion of the requirement for an annual update of the disclosure statement;
  - Adding to the list of possible personal conflicts-of-interest violations in (b)(6);
  - Removing the list of remedies in paragraph (d); and
  - Clarifying the clause flowdown.

#### A. General

*Comments:* Several respondents commented on general elements of the proposed coverage. Some supported implementing the proposed coverage, while others stated that the proposed