

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0076; Sequence 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–54; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by DoD, GSA, and NASA in this Federal Acquisition Circular (FAC) 2005–54. 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>.

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 2005–54 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–54

Item	Subject	FAR case	Analyst
I	Notification of Employee Rights Under the National Labor Relations Act	2010–006	McFadden.
II	Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions	2008–025	Robinson.
III	Small Disadvantaged Business Program Self-Certification	2009–019	Morgan.
IV	Certification Requirement and Procurement Prohibition Relating to Iran Sanctions	2010–012	Davis.
V	Representation Regarding Export of Sensitive Technology to Iran (Interim)	2010–018	Davis.
VI	Set-Asides for Small Business (Interim)	2011–024	Morgan.
VII	Sudan Waiver Process	2009–041	Davis.
VIII	Successor Entities to the Netherlands Antilles	2011–014	Davis.
IX	Labor Relations Costs	2009–006	Chambers.
X	Technical Amendments.		

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 numbers and subject set forth in the documents following these item summaries. FAC 2005–54 amends the FAR as specified below:

Item I—Notification of Employee Rights Under the National Labor Relations Act (FAR Case 2010–006)

This rule adopts as final, without change, the interim rule that published in the **Federal Register** at 75 FR 77723 on December 13, 2010, implementing Executive Order (E.O.) 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the Department of Labor (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.

Item II—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions (FAR Case 2008–025)

This final rule amends the FAR to address personal conflicts of interest by employees of Government contractors, as required by section 841(a) of the

Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) (now codified at 41 U.S.C. 2303). This rule requires the contractor to take the steps necessary to identify and prevent personal conflicts of interest for employees that perform acquisition functions closely associated with inherently governmental functions. The contracting officer shall consult with agency legal counsel for advice and recommendations on a course of action when the contractor reports a personal conflict of interest violation by a covered employee or when the contractor violates the clause requirements.

Item III—Small Disadvantaged Business Program Self-Certification (FAR Case 2009–019)

This rule adopts as final, without change, an interim rule that implements revisions made by the Small Business Administration (SBA) in its Small Disadvantaged Business (SDB) regulations. The FAR interim rule was published in the **Federal Register** at 75 FR 77737 on December 13, 2010, to allow SDBs to self-represent their SDB status to prime contractors in good faith when seeking Federal subcontracting opportunities. This FAR revision removed an administrative burden for SDB subcontractors to obtain SBA certification, as well as prime

contractors, who were required to confirm that SDB subcontractors had obtained SBA certification.

Item IV—Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (FAR Case 2010–012)

This rule adopts as final, with minor changes, an interim rule. The interim rule implemented sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 102 requires certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996. Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. This rule will have little effect on domestic small business concerns, because such dealings with Iran are already generally prohibited under U.S. law.

Item V—Representation Regarding Export of Sensitive Technology to Iran (FAR Case 2010–018) (Interim)

This interim rule amends the FAR to include additional requirements to implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111–195. To enhance

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]

BILLING CODE 6820-EP-P

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

rule is not necessary, is duplicative, or should not apply to certain organizations, such as DoD-sponsored Federally Funded Research and Development Centers (FFRDCs).

Response: The Councils concur with those respondents who support the rule. In addition to implementing a statutory requirement, contained in section 841(a) of the NDAA for FY 2009, the proposed coverage fills a current gap in the FAR, which contains very little coverage on preventing personal conflicts of interest for contractor employees. The proposed coverage is not duplicative of current organizational conflicts-of-interest coverage, or the current coverage in FAR subpart 3.10 regarding the contractor Code of Business Ethics, and should not be limited to exclude FFRDCs.

Comments: Several respondents addressed the issue of whether personal conflicts-of-interest coverage for contractor employees should mirror the ethics rules that apply to Government employees.

Response: The Councils recognize that most of the ethics statutes that apply to Government employees are not applicable to contractor employees. The differences between the coverage here and the ethics standard applicable to Federal employees reflect those differences in the underlying statutes.

B. Definitions

1. Acquisition Function Closely Associated With Inherently Governmental Functions

Comments: Some respondents suggested that the definition be limited, either by explicitly restricting it to actions performed on behalf of the Government or by removing the term “supporting” from the definition. Some respondents argued that the proposed definition was problematic because it was inconsistent with current FAR coverage or the statutory language in the NDAA. Two respondents suggested waiting to issue a final rule until the Office of Management and Budget’s (OMB) review of inherently governmental functions was complete, to ensure compatibility with any definitions issued as a result of that review. One of these respondents recommended publication of a revised proposed rule rather than a final rule.

Response: Contextual text and applicability already limit the definition to an appropriate class of actions, and striking the word “supporting” would imply that contractors were performing inherently governmental tasks, which is prohibited by law and regulation. While the definition provided is not identical to that provided in FAR 7.503(c)(12) or

to the summary definition provided in the NDAA, it builds on both of those definitions and is not inconsistent with them, and no changes were made to the final rule that would require that it be delayed or published as a revised proposed rule. Finally, if changes will be required as a result of future OMB guidance regarding work closely associated with inherently governmental functions, a separate case will be opened to implement them.

2. Covered Employee

a. Prime Contractor Should Not Be Responsible for Employees Other Than Own Employees

Comments: Several respondents were concerned that the definition of “covered employee” could be interpreted to include employees of contractors, subcontractors, consultants, and partners. Respondents were concerned that assuming responsibility for all of these employees would create an unreasonable burden because the prime contractor could not impose disciplinary actions against other companies’ employees or adequately identify or address personal conflicts of interest with respect to such employees.

Response: The Councils have modified the definition to clarify that the contractor is not directly responsible for the employees of subcontractors. The subcontract flowdown portion of the clause at FAR 52.203–16(e) will ensure that subcontractor employees are adequately covered while making sure that the subcontractor bears responsibility for its employees.

b. Self-Employed Individual

Comment: One respondent stated that in the case of a self-employed individual, the disclosure forms would be submitted to the same person filling out the form.

Response: The Councils have addressed this issue in the final rule. When a self-employed individual is a subcontractor and that individual is personally performing the acquisition function closely associated with inherently governmental functions, rather than having an employee of the subcontractor perform the function, then the self-employed individual will be treated as a covered employee of the prime contractor for purposes of this rule and the clause will not flow down. In such case, the clause could not meaningfully flow down to the subcontractor, because there is no employer/employee relationship involved at the subcontract level of performance. The individual completing the disclosure form and the individual

accepting and reviewing those forms cannot be one and the same. The definition of “covered employee” was modified to reflect this.

Similarly, the clause cannot meaningfully apply at the prime level if the functions are to be performed by a self-employed individual, rather than a contractor employee. Since a self-employed individual is a legal entity, conflicts of interest relating to a prime contract with an entity (whatever its composition) are covered under the organizational conflicts of interest coverage at FAR subpart 9.5.

c. Limit Covered Employee to Those Specifically Performing the Acquisition Functions Under the Contract

Comment: One respondent raised the concern that agencies might interpret “covered employee” to mean all employees who work for a Government contractor, and suggested that the definition should be revised to clarify that a covered employee is an employee that is remunerated specifically to perform acquisition functions closely associated with inherently governmental functions.

Response: The definition, as amended, is clear that an employee is only covered under the rule if the employee performs acquisition functions closely associated with inherently governmental functions. Further, “acquisition function closely associated with governmental functions” is defined to tie directly to support of the activities of a Federal agency.

3. Non-Public Government Information

Comments: One respondent suggested that the definition of “non-public Government information” be limited by providing more specific guidance. One specific approach that was suggested involved requiring that any protected information be explicitly designated as such in writing by the Government. Another respondent suggested that the rule should be broadened to prohibit contractor employees from using any information related to the contract on which they work. This respondent stated that anything less would “open the floodgates” for mitigation or waivers, and debates over timelines of when information was publicly available.

Response: It would be overly burdensome to require that all such information be explicitly marked by the Government. The definition of “non-public Government information” was intended to have a broad meaning, including proprietary data belonging to another contractor as well as

information that could confer an unfair competitive advantage to a contractor for whom the employees work. This proposed definition requires the use of judgment on the part of contractors. A contractor employee should presume that all information given to a contractor has not been made public unless facts clearly indicate the contrary.

Further, the definition of “non-public Government information” is similar to the standard Government employees use executing their jobs—a standard that is particularly appropriate when tasks involve acquisition functions closely associated with inherently governmental functions.

This topic is relevant to other pending and forthcoming FAR cases, and for that reason, some structural changes have been made to the definition to harmonize this case with potential future usage. Specifically, the qualification that the information be accessed through performance on a Government contract has been removed from the definition, but has been applied in the rule text in appropriate places.

4. Personal Conflict of Interest

Comments: Many respondents commented on the definition of “personal conflict of interest” in proposed FAR 3.1101 and also in the clause at FAR 52.203–16(a).

One cautioned against defining the term “personal conflict of interest” by relying solely on terminology used in the Government’s Standards of Conduct for Employees of the Executive Branch (Standards), at 5 CFR part 2635, urging the Councils to take differences between the Government and contractor workforce into account.

Several other respondents considered the proposed definition of “personal conflict of interest” to be imprecise. Each of these respondents identified terms in the definition that are undefined or that they deemed ambiguous or overly broad, including “personal activity,” “relationship,” “close family members,” “other members of the household,” “other employment or financial relationships,” “gifts,” “compensation,” and “consulting relationships.” Although one of these organizations counseled against relying too heavily on language in the Government’s standards, as discussed above, four others recommended that the Councils borrow from comparable definitions in existing Government regulations.

One respondent suggested an alternative definition of the term “personal conflict of interest” that it considered an amalgam of the proposed

definition and definitions in the ethics regulations and the Troubled Asset Relief Program regulations at 31 CFR 31.201, while another respondent urged that the definition of “personal conflict of interest” not rely on a listing of examples that is incomplete, yet not specifically designated as non-exclusive.

One respondent urged that the rule “incorporate some element of contemporaneous ‘knowledge’ on the part of the covered employee before the PCI requirements are triggered,” and that coverage be included to exclude *de minimis* ownership or partnership interests. On the other hand, another respondent recommended that the definition of “personal conflict of interest” be expanded in scope to capture personal conflicts of interest that can arise from prior work or employment undertaken in support of Government acquisition functions.

Response: As explained in the preamble to the proposed rule, the Councils considered various sources of guidance when developing the definition of “personal conflict of interest.” The definition of “personal conflict of interest” provided by the rule clearly borrowed from the Government ethics provisions. On the other hand, the Councils intentionally did not create a mirror image of either 18 U.S.C. 208 or the Government’s impartiality provision. The Government’s impartiality standard judges a public servant’s circumstances from the perspective of a “reasonable person,” whereas the FAR standard focuses on the contractor’s obligation to the Government and defines a “personal conflict of interest” as a situation “that could impair the employee’s ability to act impartially and in the best interest of the Government when performing under the contract.” (A verb other than “impair” was inadvertently used in the proposed contract clause. The Councils have corrected this error to make the clause consistent with the rule text.)

Similar to the Government’s approach in its ethics regulations, the proposed definition of “personal conflict of interest” listed “sources” of conflicts, including the financial interests of an employee and other members of his or her household, and then listed types of financial interests in subparagraphs (2)(i) through (2)(viii). In response to several comments, the Councils have decided to revise the wording of paragraph (2) of the definition to make it clear that this listing is intended to amplify the term “financial interest” as used earlier in the definition. The Councils have also inserted the words “[f]or example” at the beginning of

paragraph (2) to clearly indicate that the listing in subparagraphs (2)(i) through (2)(viii) is not exhaustive.

The Councils have not attempted to further define other terms or phrases used within the definition of “personal conflict of interest.” The Councils consider the proposed terminology adequate to enable a contractor to develop screening procedures that will elicit relevant information from its covered employees. In the definition of “personal conflict of interest”, the regulation affords flexibility regarding *de minimis* interest, since it may be determined that a *de minimis* interest would not “impair the employee’s ability to act” with the required objectivity. Separately, although no “knowledge” element has been added, the Councils acknowledge that neither a contractor nor its employees can apply the impartiality standard if it cannot yet be known what interests may be affected by a particular acquisition.

C. Applicability

Comments: One respondent recommended that specific language be added to the proposed rule limiting its application to those contractor employees who directly support Government buying offices.

Response: Section 841(a) of the NDAA for FY 2009 required that policy be developed to prevent personal conflicts of interest by all contractor employees performing acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal agency or department, and not all such work occurs in direct support of a buying office.

Comment: One respondent stated that the statutory requirement that the clause be included in task or delivery orders is not recognized in the rule.

Response: The applicability to task or delivery orders against existing contracts is addressed under the applicability date in this preamble. Such transitional issues are not included as part of the regulation, because they are only temporary, until the clause is included in most existing contracts.

D. Contractor Procedures

1. Screening of Covered Employees (Including Financial Disclosure)

Comments: More than half the respondents commented on this issue, and provided a variety of concerns and suggestions, which are addressed more specifically in the following response.

Response: In response to these comments, the Councils have narrowed the scope of the required disclosures in

a number of ways. First, in response to concern that the word “including” in FAR 3.1103(a) created ambiguity, the Councils have substituted the word “by,” to indicate that disclosure is the mandated screening mechanism. Next, in response to a wide variety of comments regarding the breadth of required disclosures, the Councils have made several revisions to FAR 3.1103(a)(1) to make it clear that contractors are afforded some flexibility in determining how to implement the screening requirement (*i.e.*, one method of effective screening might require each covered employee to review a list of entities affected by the upcoming work and either disclose any conflict or confirm that he or she has none), and to allow that disclosures be limited to financial interests “that might be affected by the task to which the employee has been assigned.” Finally, the Councils recognized that other potential sources of conflicts, including employment or gifts, should be covered by these procedures as well.

The Councils have also made changes in response to a number of respondents that noted inconsistencies and other concerns regarding updates to employee financial disclosures. These changes include ensuring that the language in FAR part 3 is consistent with the language in the clause, and that both require an update only when “an employee’s personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.” If it is the task that changes, rather than the financial circumstances, the situation will be covered by the requirement to obtain information from a covered employee “when the employee is initially assigned to the task under the contract.” Implementing “as needed” disclosure addresses one respondent’s concern about selling and repurchasing assets to avoid personal conflict of interest requirements, and also eliminates the need for disclosure on an annual basis.

Comments: In addition, several respondents addressed other areas related to the financial disclosure requirement. Several respondents were generally critical of the burden involved in the requirement to screen employees for conflicts of interest, arguing that it is short-sighted and “has an element of impossibility,” or that it would be “onerous and unproductive” to require disclosure, for example, every time a covered employee’s retirement portfolio, or that of his or her spouse, might include potential contractors. Other respondents stated that the financial

disclosure requirement is intrusive, and would provide employers with “unprecedented insight into employee private financial data” that would give the employer leverage during negotiations about salary, benefits, and work conditions.

Response: The Councils carefully considered the comments that were critical of the burdensome or intrusive nature of the screening process involving financial disclosure, but have determined that the concerns expressed are outweighed by the importance of assuring the integrity of the Government’s acquisition process.

Comments: Finally, two respondents recommended clarification of roles and responsibilities concerning the review of financial disclosure statements. One recommended that the rule should specify that contractors acting in good faith may rely on the information submitted by their employees or that the rule specify that review by the employee’s supervisor and legal counsel or ethics officer is sufficient. The other recommended that the contractor should be required to designate an official to solicit and review financial disclosure statements, but also suggested that the Government’s contracting officer should review the statements and be able to access the services of subject matter experts to assist with the review. The same respondent also suggested that the rule should require that the covered employee’s submission “be accompanied by a certification as to the accuracy, completeness and truthfulness of the submission.”

Response: The Councils consider that it is the contractor’s responsibility to decide how to review employee disclosures. Government contracting officers have not been assigned the responsibility to review disclosures of financial interests. Further, there is a statutory prohibition on adding non-statutory certification requirements to the FAR without express written approval by the Administrator for Federal Procurement Policy (see FAR 1.107).

2. Prevent Personal Conflicts of Interest (Including Nondisclosure Agreements)

a. Preventing Personal Conflicts of Interest

Comments: Some respondents provided comments in this area concerning the role of the Government in contractor processes. For example, one respondent pointed out that the requirement to reassign tasks does not oblige the contractor to report known or reported conflicts of interest to the

contracting officer in order for reassignment to occur. Others suggested that the required non-disclosure agreements be submitted to the contracting officer for review and approval.

Response: It is up to the contractor to manage its employees, and to assign them in a way that prevents personal conflicts of interest. The Government only needs to be informed if violations occur, or if the contractor needs approval for a mitigation plan or requests a waiver. Similarly, while employer/employee non-disclosure agreements will be available for Government inspection for recordkeeping compliance purposes, it is the contractor’s responsibility to ensure that such agreements are enacted and enforced.

b. Non-Disclosure Agreements (NDAs)

Comments: One respondent stated that the proposed rule did not provide any specific guidance concerning the NDA requirement. This respondent requested that the Councils address—

- Which parties are required to sign an NDA;
- Whether the contractor and/or the contractor employee are required to execute the NDA for each entity that provides information to which it will have access;
- Whether an entity that submitted non-public information is entitled to know who has signed an NDA relating to that information; and
- Whether there is a required duration for the NDA. If an NDA is not indefinite, how should a contractor address protection of non-public information when the NDA expires?

Response: The rule requires that each employee sign an NDA with respect to information obtained during the course of the work being performed under the contract. The agreements should be structured to protect the interests of the information owner(s), the contractor, and the contractor employee, including protection of appropriate length (often indefinitely or until the information is otherwise made public). Since these agreements will be executed between each individual contractor and that contractor’s employees, and contractors are not required to provide any notice of those agreements, there will be no means of providing an entity with a listing of those who have signed NDAs which cover their information.

3. Appearance of a Conflict

Comments: Several respondents expressed concern about the difficulty contractors face in identifying circumstances that suggest “even the

appearance of personal conflicts of interest.” These respondents state that the standard is vague and too difficult for contractors and their employees to implement. One respondent points out that there are likely different standards in the “healthcare, defense, or transportation industries” and suggests limiting language along the lines of “consistent with industry norms.”

Response: The rule requires that contractors inform covered employees of their obligation to avoid even the appearance of personal conflicts of interest. That same obligation is imposed on Government employees by FAR 3.101-1. Nothing in this rule requires a report of an “appearance of conflict.” Concern about how to deal with an “appearance of a conflict,” where in fact there is actually no conflict, is difficult, but once sensitized to the issue of appearances, contractors and contracting officers can develop solutions to the appearance questions that will protect the public’s trust in the acquisition system.

The Councils do not concur with the suggestion that the rule incorporate industry norms as a standard. While there very well may be different ways of doing business in the healthcare, defense, and transportation industries, the threshold provided here is the minimum level of coverage required across all industries regarding personal conflicts of interest and the appearance of such conflicts.

4. Report Violations to the Contracting Officer

a. Timing of the Report

Comments: Various respondents raised concerns regarding the report to the contracting officer. They pointed out that the proposed rule both required a report of a conflict “as soon as it is identified” and also requires a full description of the violation and the actions taken. The respondents suggested that the rule permit some time for investigation and consideration of action before reporting the conflict. Another suggestion was to allow for a specified number of days to report.

Response: In response to these comments, the Councils have clarified that the initial report of immediate actions taken may be followed with a report of subsequent corrective action. The respondents correctly pointed to the apparent dilemma presented in the proposed rule which requires a report, as soon as the conflict is identified, and yet requires that the report include a full description and a contractor resolution. The rule necessarily requires that the contractor notify the contracting officer

about a conflict “as soon as it is identified” so that, if necessary, the contracting officer can take immediate steps to protect the Government.

The violation has not been “identified” until the Contractor has performed sufficient investigation to confirm that a violation has occurred. Practically speaking, we would expect contractors will be able to identify the conflict, initially assess its scope, and even evaluate potential corrective actions relatively quickly. We would also expect that in proposing corrective action, it will be necessary in many cases that the contractor takes the time to evaluate the seriousness of the matter and develop a solution acceptable to the Government, as well as the employee in some circumstances (where the violation was inadvertent, for instance). The final rule better reflects the requirements of such situations.

b. Report Violations to the Inspector General

Comments: Several agency respondents recommend that the report be made to the Inspector General, as well as the contracting officer.

Response: Not all employee personal conflict-of-interest violations are violations of criminal law or nefarious. The contractor’s report is treated here as a contractual issue to be addressed first by the contractor and then by the contracting officer. There is no reason to add a third party, such as the Inspector General, unless violation of Federal criminal law has occurred. In those cases, a report to the Inspector General will already be required in accordance with FAR 52.203-13(b)(3). On the other hand, nothing in this rule prevents individual agencies and their Inspector General from establishing internal procedures for coordinating contractor reports.

5. Specify Period of Record Retention

Comments: One respondent recommended that the proposed rule should include language requiring that contractors maintain records of financial disclosures and all actions taken in response to an alleged personal conflict of interest for a certain period of time (perhaps 3 or 5 years).

Response: FAR 4.703 provides requirements for retention of contractor records (generally 3 years after final payment). Subpart 4.7 applies to records generated under contracts that contain either of the FAR audit and records clauses (FAR 52.214-26 or FAR 52.215-2). Pursuant to these clauses, contractors must generally make records available to satisfy contract negotiation, administration, and audit requirements

of the contracting agencies and the Comptroller General.

E. Mitigation or Waiver

Comments: One respondent recommended removing the requirement that any mitigation or waiver be limited to exceptional circumstances. At the other end of the spectrum, one respondent suggested that mitigation and waiver not be allowed at all.

Response: While the goal of the rule is to prevent personal conflicts of interest, making provision for mitigation or waiver in exceptional circumstances is necessary to prevent potential negative consequences to the Government. Balancing these goals is achieved by requiring that any mitigation or waiver be approved in writing, including a description of why such action is in the best interest of the Government.

Regarding the suggestion to allow approval of mitigation at the chief of the contracting office level, mitigation and waiver should only be employed in exceptional circumstances, and one means of ensuring this is requiring the approval of the head of the contracting activity.

F. Violations/Remedies

1. Description of Violations by Covered Employees (FAR 3.1103(a)(6) and FAR 52.203-16(b)(6))

Comment: One respondent recommended several changes to this section, which are addressed more specifically in the following response.

Response: While the Councils do not concur with recommendations to create a definitive list of violations to replace the examples, or to alter the requirement to report violations to tie specifically to a failure to update the required financial disclosure form, the Councils do concur with the suggestion to include “Failure of a covered employee to comply with the terms of a non-disclosure agreement,” in the list of violations. This covers situations where the inappropriate disclosure of information might not be due to a personal conflict of interest or for personal gain, but instead results from thoughtless or careless action. Furthermore, this is parallel to the construction of the requirements in FAR 3.1103(a)(2)(iii).

2. Violations by the Contractor

a. Clarification of Contractor Liability

Comments: Two respondents expressed concern about the imposition of liability upon contractors, and suggested that an employer should only be sanctioned when it fails to address

issues within its control, not as a guarantor of flawless performance by its employees in the area of personal conflicts of interest.

Response: A contractor should only be held liable for a violation if the contractor fails to comply with paragraphs (b), (c)(3), or (d) of the clause at FAR 52.203–16. There is nothing in the clause that establishes contractor liability for a violation by an employee, as long as the contractor followed the appropriate steps to uncover and report the violation.

Because the rule addresses both violations by a covered employee and violations by the contractor, the Councils have clarified in each instance what type of violation is being addressed (FAR 3.1103(a)(6) and (b); FAR 3.1105(a) and (b); and FAR 52.203–16(b)(6)). This should help the concern of the respondent that the contractor may be subject to remedies for violations by covered employees, rather than compliance with the clause requirements.

In addition, the Councils have adopted two suggested changes to the text of FAR 3.1105(b). “Pursue” has been changed to “consider,” to more accurately reflect the contracting officer’s obligation. The Councils also deleted the term “sufficient” before the word “evidence” in describing the conditions for considering appropriate remedies. If the contracting officer finds evidence of a violation, the contracting officer should consider appropriate remedies. The term “evidence” on its own presents the requirement for a level of certainty beyond a mere rumor or suspicion.

3. Remedies for Violations by the Contractor

Comment: One respondent objected to inclusion of the list of remedies in the clause at FAR 52.203–16(d), stating that the FAR contains adequate remedies to address non-compliance with any material requirement of a contract, which includes the proposed FAR clause 52.203–16.

Response: While the list of remedies included within FAR 52.203–16 specifically identified those remedies available for violations involving potential conflicts, it was not intended to create new remedies. For this reason, the Councils have removed the paragraph regarding remedies from the clause. Removal of this section also addresses comments from several respondents related to individual remedies included in the list.

Comment: One respondent recommended adding a provision stating that certain violations should

immediately be entered into the new Federal Awardee Performance and Integrity Information System (FAPIIS).

Response: Inclusion in the FAPIIS database is already adequately covered. For violations that result in suspension, debarment, or termination of the contract for default or cause, such actions will be entered into FAPIIS in accordance with the requirements published in the **Federal Register** at 75 FR 14059 on March 23, 2010. The other violations are of a type that would be entered in FAPIIS through the contracting officer performance evaluation of the contractor.

G. Clause Flowdown

1. Flowdown Requirements Should Mirror Clause

Comments: Respondents were concerned that the proposed rule requires the prime contractor to be responsible for subcontractor personnel, and that the requirements for inclusion in a subcontract are broader than the requirements for including the clause in a prime contract.

Response: The Councils have made changes to clarify the flowdown requirements. First, the definition of “covered employee” has been clarified to indicate that the prime contractor is not responsible for screening subcontractor employees. See also the response to comment B.2., definition of “covered employee.” Additionally, the flowdown provision, which stated that the clause should be included in subcontracts that “may” involve performance of certain work in the proposed rule, has been revised to only apply to subcontracts that “will” involve such work, for consistency with the requirements for inclusion in prime contracts.

2. Subcontract Threshold

Comment: The flowdown of the clause should be conditioned on subcontracts that exceed the simplified acquisition threshold, rather than specifying \$150,000.

Response: The threshold for application to subcontracts will not be subject to change during the performance of the contract, if the simplified acquisition threshold changes, so stating a dollar amount is preferable. When the simplified acquisition threshold changes, the clause will be changed for future contracts, but those changes will not be imposed on existing contracts.

H. Cost and Administrative Burden

1. Costs of Ethics Compliance Program

Comment: Several respondents expressed concerns about the costs involved with establishing a comprehensive compliance program to comply with the requirements of this rule.

Response: While the Councils recognize that there will be some administrative costs associated with implementation of this program, the Government anticipates that when preparing proposals for Government contracts vendors will account for these costs appropriately and through their normal procedures. Subcontractors also are expected to include their anticipated costs in their offered price to the prime contractor. The anticipated costs, therefore, are likely to be passed on to the Government.

2. Information Collection Requirements

Comments: One respondent stated that the estimates of the Paperwork Reduction Act burdens (information collection requirements) appear to be significantly underestimated, and do not take into account the many levels of internal reviews that would be required as well as efforts associated with coordinating with legal counsel, program staff, *etc.*, as necessary.

Another respondent, in response to the notice published in the **Federal Register** at 76 FR 27648 on May 12, 2011, questioned the accuracy and currency of the supporting statement for the information collection requirement for the subject rule.

Response: In response, the Councils updated the data used in the supporting statement, including current Federal Procurement Data System data. This resulted in minor or non-material changes in the estimated number of responses. For example, the estimate for the ratio of violations reported to the Department of Justice compared to the base of estimated number of Federal employees was doubled, due to correcting the base to include only Federal civilian employees. However, this approach only increased the estimated number of annual contractor employee violations from 10 to 22.

In addition, the Councils considered the comment that the hours per response are underestimated, due to the many levels of internal reviews that would be required as well as efforts associated with coordinating with legal counsel or program staff, as necessary. Although the Councils did not have specific data as to how much increase these reviews would require, the Councils doubled the previous estimates

of 2 hours for reporting a violation and 4 hours for requesting mitigation, resulting in an estimate of 4 hours per violation report and 8 hours per mitigation request. As with any estimate of an average number, there will be a large range between the high end (as in a large corporation) and the low end where only a few people may be involved.

These revisions result in an increase of the estimated response burden hours from 1,820 hours in the proposed rule to 3,688 hours. The estimated recordkeeping hours remain unchanged at 61,200 hours.

I. Miscellaneous Comments

The Councils considered, but did not implement, a variety of additional comments. These included suggestions that the rule require the following:

- Use of a standard non-disclosure agreement form, to be published by the Government.
- Use of a standards financial disclosure form, to be published by the Government.
- Placement of responsibility for compliance at a “high level” within the contractor organization.
- Use of established structures required for implementation of the Contractor Code of Business Ethics for implementation of these requirements.
- Certification from the contractor that no personnel have a personal conflict of interest.
- Establishment of training programs for contractor personnel.

In each of these cases, implementation of the recommendation is neither necessary nor desirable, because establishing additional structural requirements would eliminate the flexibilities provided to contractors. The proposed rule sets out the requirements with which each contractor must comply, but allows latitude for the application of business judgment in structuring internal programs to achieve that compliance.

Comment: Finally, one respondent suggested that the proposed rule should require “that a contractor certify that * * * no covered personnel have a personal conflict of interest.”

Response: A certification requirement would not add any substantial protections not already present in the rule.

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 Executive Order 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 requirements of the clause are not significantly burdensome. The requirement to obtain and retain information on employees’ potential conflicts of interest is limited to service contractors whose employees are performing acquisition functions closely associated with inherently governmental functions for, or on behalf of, Federal agencies. This class is a minority of Government contractors and is becoming smaller as Government agencies bring more such functions back in house. Further, there is no requirement to report the information collected to the Government. It is not a significant economic burden to report to the contracting officer personal conflict-of-interest violations by covered employees and the corrective actions taken. The final rule has also reduced potential burden by—

1. Not including a certification requirement;
2. Not requiring a formal training program;
3. Clarifying that the rule does not apply to commercial items;
4. Removing the requirement for an annual update of the financial disclosure statement; and
5. Allowing mitigation under exceptional circumstances.

Comments on impact on small business: Three respondents expressed concern about the potential impact this rule could have on small businesses and specifically that the reporting, prevention, and oversight requirement could be a burden for small businesses such that they might reconsider pursuing Federal contracts. One respondent believed that small

businesses will be most affected by this rule because it could force divestitures.

Response: The Councils agree that the reporting, prevention and oversight requirements may cause some burden for small businesses. The rule requires that prime contractors have procedures in place to screen covered employees and requires avoidance or mitigation of any potential conflicts. It may be difficult for smaller companies to avoid or mitigate the conflict (*e.g.*, remove the employee from that position on the contract when the business only has a few employees). However, the burden on small business is reduced because the rule—

- Provides the contractor with discretion on how best to implement its procedures;
- Does not hold the prime contractor liable for violations by employees, as long as the contractor has procedures in place and deals appropriately with the violations;
- Clarifies the meaning of “covered employee” and requires a flowdown to all subcontracts involving performance of acquisition related functions by employees, so that the prime contractor is not directly responsible for assessing the subcontractor employee personal conflicts of interest, as many respondents feared; and
- Provides the contracting officer with discretion on the handling of personal conflicts of interest violations.

Further, the public law did not create an exception for small businesses with respect to implementation and it would be inconsistent with the purpose and intent of the public law to not apply the rules relating to personal conflicts of interest to any particular group of contracts where personnel are performing acquisition functions closely associated with inherently governmental functions.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The final rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000–0181, titled: Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions.

List of Subjects in 48 CFR Parts 1, 3, 12, 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.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 3, 12, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 3, 12, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATORY SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory text, by adding FAR segments “3.11” and “52.203–16” and the corresponding OMB Control Number “9000–0181.”

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 3. Add Subpart 3.11 to read as follows:

Subpart 3.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

Sec.

- 3.1100 Scope of subpart.
- 3.1101 Definitions.
- 3.1102 Policy.
- 3.1103 Procedures.
- 3.1104 Mitigation or waiver.
- 3.1105 Violations.
- 3.1106 Contract clause.

Subpart 3.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

3.1100 Scope of subpart.

This subpart implements the policy on personal conflicts of interest by employees of Government contractors as required by section 841(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) (41 U.S.C. 2303).

3.1101 Definitions.

As used in this subpart—

Acquisition function closely associated with inherently governmental functions means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

- (1) Planning acquisitions.
- (2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.

(4) Evaluating contract proposals.

(5) Awarding Government contracts.

(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).

(7) Terminating contracts.

(8) Determining whether contract costs are reasonable, allocable, and allowable.

Covered employee means an individual who performs an acquisition function closely associated with inherently governmental functions and is—

(1) An employee of the contractor; or

(2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

Personal conflict of interest means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee’s ability to act impartially and in the best interest of the Government when performing under the contract. (A *de minimis* interest that would not “impair the employee’s ability to act impartially and in the best interest of the Government” is not covered under this definition.)

(1) Among the sources of personal conflicts of interest are—

(i) Financial interests of the covered employee, of close family members, or of other members of the covered employee’s household;

(ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and

(iii) Gifts, including travel.

(2) For example, financial interests referred to in paragraph (1) of this definition may arise from—

(i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;

(ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);

(iii) Services provided in exchange for honorariums or travel expense reimbursements;

(iv) Research funding or other forms of research support;

(v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);

(vi) Real estate investments;

(vii) Patents, copyrights, and other intellectual property interests; or

(viii) Business ownership and investment interests.

3.1102 Policy.

The Government’s policy is to require contractors to—

(a) Identify and prevent personal conflicts of interest of their covered employees; and

(b) Prohibit covered employees who have access to non-public information by reason of performance on a Government contract from using such information for personal gain.

3.1103 Procedures.

(a) By use of the contract clause at 52.203–16, as prescribed at 3.1106, the contracting officer shall require each contractor whose employees perform acquisition functions closely associated with inherently Government functions to—

(1) Have procedures in place to screen covered employees for potential personal conflicts of interest by—

(i) Obtaining and maintaining from each covered employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:

(A) Financial interests of the covered employee, of close family members, or of other members of the covered employee’s household.

(B) Other employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business).

(C) Gifts, including travel; and

(ii) Requiring each covered employee to update the disclosure statement whenever the employee’s personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

(2) For each covered employee—

(i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract for which the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;

(ii) Prohibit use of non-public information accessed through

performance of a Government contract for personal gain; and

(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.

(3) Inform covered employees of their obligation—

(i) To disclose and prevent personal conflicts of interest;

(ii) Not to use non-public information accessed through performance of a Government contract for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this section; and

(6) Report to the contracting officer any personal conflict-of-interest violation by a covered employee as soon as identified. This report shall include a description of the violation and the proposed actions to be taken by the contractor in response to the violation, with follow-up reports of corrective actions taken, as necessary.

(b) If a contractor reports a personal conflict-of-interest violation by a covered employee to the contracting officer in accordance with paragraph (b)(6) of the clause at 52.203–16, Preventing Personal Conflicts of Interest, the contracting officer shall—

(1) Review the actions taken by the contractor;

(2) Determine whether any action taken by the contractor has resolved the violation satisfactorily; and

(3) If the contracting officer determines that the contractor has not resolved the violation satisfactorily, take any appropriate action in consultation with agency legal counsel.

3.1104 Mitigation or waiver.

(a) In exceptional circumstances, if the contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of the clause at 52.203–16, Preventing Personal Conflicts of Interest, the contractor may submit a request, through the contracting officer, for the head of the contracting activity to—

(1) Agree to a plan to mitigate the personal conflict of interest; or

(2) Waive the requirement to prevent personal conflicts of interest.

(b) If the head of the contracting activity determines in writing that such action is in the best interest of the Government, the head of the contracting activity may impose conditions that

provide mitigation of a personal conflict of interest or grant a waiver.

(c) This authority shall not be redelegated.

3.1105 Violations.

If the contracting officer suspects violation by the contractor of a requirement of paragraph (b), (c)(3), or (d) of the clause at 52.203–16, Preventing Personal Conflicts of Interest, the contracting officer shall contact the agency legal counsel for advice and/or recommendations on a course of action.

3.1106 Contract clause.

(a) Insert the clause at 52.203–16, Preventing Personal Conflicts of Interest, in solicitations and contracts that—

(1) Exceed the simplified acquisition threshold; and

(2) Include a requirement for services by contractor employee(s) that involve performance of acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal agency or department.

(b) If only a portion of a contract is for the performance of acquisition functions closely associated with inherently governmental functions, then the contracting officer shall still insert the clause, but shall limit applicability of the clause to that portion of the contract that is for the performance of such services.

(c) Do not insert the clause in solicitations or contracts with a self-employed individual if the acquisition functions closely associated with inherently governmental functions are to be performed entirely by the self-employed individual, rather than an employee of the contractor.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.503 by adding paragraph (a)(9) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) * * *

(9) Public Law 110–417, section 841(a), Policy on Personal Conflicts of Interest by Employees of Federal Government Contractors 41 U.S.C. 2303 (see subpart 3.11).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 52.203–16 to read as follows:

52.203–16 Preventing Personal Conflicts of Interest.

As prescribed in 3.1106, insert the following clause:

Preventing Personal Conflicts of Interest (DEC 2011)

(a) *Definitions.* As used in this clause—
Acquisition function closely associated with inherently governmental functions means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

(1) Planning acquisitions.
(2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.
(4) Evaluating contract proposals.

(5) Awarding Government contracts.
(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).
(7) Terminating contracts.

(8) Determining whether contract costs are reasonable, allocable, and allowable.

Covered employee means an individual who performs an acquisition function closely associated with inherently governmental functions and is—

(1) An employee of the contractor; or
(2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

Non-public information means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or
(2) Has not been disseminated to the general public and the Government has not yet determined whether the information can or will be made available to the public.

Personal conflict of interest means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. (A *de minimis* interest that would not "impair the employee's ability to act impartially and in the best interest of the Government" is not covered under this definition.)

(1) Among the sources of personal conflicts of interest are—

(i) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household;
(ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
(iii) Gifts, including travel.

(2) For example, financial interests referred to in paragraph (1) of this definition may arise from—

- (i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
- (ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
- (iii) Services provided in exchange for honorariums or travel expense reimbursements;
- (iv) Research funding or other forms of research support;
- (v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
- (vi) Real estate investments;
- (vii) Patents, copyrights, and other intellectual property interests; or
- (viii) Business ownership and investment interests.

(b) *Requirements.* The Contractor shall—

- (1) Have procedures in place to screen covered employees for potential personal conflicts of interest, by—
 - (i) Obtaining and maintaining from each covered employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:
 - (A) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household.
 - (B) Other employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business).
 - (C) Gifts, including travel; and
 - (ii) Requiring each covered employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

(2) For each covered employee—

- (i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract for which the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;
 - (ii) Prohibit use of non-public information accessed through performance of a Government contract for personal gain; and
 - (iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.
- (3) Inform covered employees of their obligation—
 - (i) To disclose and prevent personal conflicts of interest;
 - (ii) Not to use non-public information accessed through performance of a Government contract for personal gain; and
 - (iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause; and

(6) Report to the Contracting Officer any personal conflict-of-interest violation by a covered employee as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the Contractor in response to the violation. Provide follow-up reports of corrective actions taken, as necessary. Personal conflict-of-interest violations include—

- (i) Failure by a covered employee to disclose a personal conflict of interest;
- (ii) Use by a covered employee of non-public information accessed through performance of a Government contract for personal gain; and
- (iii) Failure of a covered employee to comply with the terms of a non-disclosure agreement.

(c) *Mitigation or waiver.* (1) In exceptional circumstances, if the Contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of this clause, the Contractor may submit a request through the Contracting Officer to the Head of the Contracting Activity for—

- (i) Agreement to a plan to mitigate the personal conflict of interest; or
 - (ii) A waiver of the requirement.
- (2) The Contractor shall include in the request any proposed mitigation of the personal conflict of interest.
- (3) The Contractor shall—
- (i) Comply, and require compliance by the covered employee, with any conditions imposed by the Government as necessary to mitigate the personal conflict of interest; or
 - (ii) Remove the Contractor employee or subcontractor employee from performance of the contract or terminate the applicable subcontract.

(d) *Subcontract flowdown.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts—

- (1) That exceed \$150,000; and
- (2) In which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions (*i.e.*, instead of performance only by a self-employed individual).

(End of clause)

[FR Doc. 2011-27780 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 2, 19, and 52

[FAC 2005-54; FAR Case 2009-019; Item III; Docket 2010-0108; Sequence 1]

RIN 9000-AL77

Federal Acquisition Regulation; Small Disadvantaged Business Self-Certification

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 incorporate changes made by the Small Business Administration (SBA) to its small disadvantaged business (SDB) program.

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

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at (202) 501-2364, 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 2009-019.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the *Federal Register* at 75 FR 77737 on December 13, 2010, to implement in the FAR revisions made by the SBA regarding certification of Federal subcontractors. The FAR revisions, as identified in the interim rule, allow for small disadvantaged businesses (SDBs) to self-represent their SDB status to prime contractors in good faith when seeking Federal subcontracting opportunities.

Previously under the FAR, Federal prime contractors were required to confirm that subcontractors representing themselves as small disadvantaged businesses were certified by the SBA as SDB firms. DoD, GSA, and NASA received no comments in response to the interim rule.

II. 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 not a significant regulatory action and, therefore, was not 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.

III. 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 FAR change removes the requirement for Federal prime contractors to confirm that small disadvantaged business subcontractors have obtained SDB certification from the SBA. This change will also be beneficial to SDB firms because they will no longer have to incur the costs associated with the formal certification process.

IV. 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 2, 19, 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 2, 19, and 52, which was published in the **Federal Register** at 75 FR 77737 on December 13, 2010, is adopted as a final rule without change.

[FR Doc. 2011-27782 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 4, 25, and 52

[FAC 2005-54; FAR Case 2010-012; Item IV; Docket 2010-0102, Sequence 1]

RIN 9000-AL71

Federal Acquisition Regulation; Certification Requirement and Procurement Prohibition Relating to Iran Sanctions

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, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 102 requires certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996 (the Iran Sanctions Act). Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of section 106 in FAR Case 2010-018, Representation Regarding Export of Sensitive Technology to Iran.

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

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 at (202) 501-4755. Please cite FAC 2005-54, FAR Case 2010-012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 60254 on September 29, 2010, to implement section 102 and to partially implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. FAR Case 2010-018, Representation Regarding Export of

Sensitive Technology to Iran, will provide further implementation of section 106 by adding a representation regarding export of sensitive technology to Iran and a waiver provision.

Two respondents submitted 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 a result of those comments are provided as follows:

A. Applicability to Construction

Comment: One respondent was concerned that the prescription at FAR 25.1103, which requires use of the FAR provision at 52.225-25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification, in “each solicitation for the acquisition of products or services” could be interpreted to exclude construction. The respondent suggested changing the prescription to require use in “all solicitations.”

Response: The phrase “products or services” was intended to include construction, as indicated in the FAR clause matrix. DoD, GSA, and NASA have agreed to change the final rule to require use of the provision in “all solicitations.”

B. Commercial Database of Persons Doing Business With Iran

Comment: One respondent provided information about the commercial Iran Economic Interest database of persons doing business with Iran, provided by World-Check, a provider of data services to organizations, including Government contractors. This respondent believed that this data set provided by his company is the only standard that would allow Government contractors the ability to comply with the provisions of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. He suggested that the Government should require or recommend that contractors should have this data available before they “self-certify.”

Response: The Government does not generally promote the use of particular commercial services. DoD, GSA, and NASA have not changed the final rule in response to this comment.

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 this rule will only have impact on an offeror that is engaging in an activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act or that is exporting sensitive technology to Iran. This rule will have little effect on domestic small business concerns, because such dealings with Iran are already generally prohibited under U.S. law. Due to current restrictions on trade with Iran, domestic entities are generally prohibited from engaging in activity that would cause them to be subject to the procurement bans described in this rule (see *e.g.*, Department of the Treasury Office of Foreign Assets Control regulations at 31 CFR part 560). Accordingly, it is expected that the number of domestic entities, both large and small, significantly impacted by this rule will be minimal, if any.

Although this rule mainly affects foreign entities, the Regulatory Flexibility Act is for the protection of domestic small entities, not foreign entities. For the definition of “small business”, the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: “(a)(1) Except for small agricultural

cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.” Therefore, the impact assessment does not include the impact on foreign entities.

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 4, 25, 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 With Change

Accordingly, the interim rule amending 48 CFR parts 4, 25, and 52 which was published in the **Federal Register** at 75 FR 60254 on September 29, 2010, is adopted as final with the following change:

PART 25—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 25.1103 by revising paragraph (e) to read as follows:

25.1103 Other provisions and clauses.

* * * * *

(e) The contracting officer shall include in all solicitations the provision at 52.225–25, Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran—Representation and Certification.

[FR Doc. 2011–27783 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 4, 25, and 52

[FAC 2005–54; FAR Case 2010–018; Item V; Docket 2010–0018, Sequence 1]

RIN 9000–AL91

Federal Acquisition Regulation; Representation Regarding Export of Sensitive Technology to Iran

AGENCY: 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 add a representation to implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran.

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

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before January 3, 2012 to be considered in the formulation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005–54, FAR Case 2010–018 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2010–018” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2010–018.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2010–018” on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–54, FAR Case 2010–018, in all correspondence related

to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

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 at (202) 501-4755. Please cite FAC 2005-54, FAR Case 2010-018.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

This interim rule expands upon the interim rule published in the **Federal Register** at 75 FR 60254 on September 29, 2010, under FAR Case 2010-012, Certification Requirement and Procurement Prohibition Relating to Iran Sanctions. FAR Case 2010-012 implementation of section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), included imposing a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. To further implement section 106, the rule adds at FAR 25.703-3(b) a requirement for a representation that the offeror does not export any 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.

The interim rule provides an exception to the representation requirement for offerors that are providing eligible products in acquisitions that are subject to trade agreements.

The waiver procedure at FAR 25.703-2(d) is moved to FAR 25.703-4, so that waiver of section 106 can be addressed along with the procedures for waiver of section 102 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

The representation that the offeror does not export sensitive technology to Iran is incorporated into the certification at FAR 52.225-25, now titled "Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran—Representation and Certification," in order to include the representation and clarify that the prohibition is against contracting with sanctioned entities. Along with the statutory definition of "sensitive technology," an email address is included in the provision, so that offerors can refer questions concerning sensitive technology to the Department of State, prior to making the representation.

This representation requirement is also applied to acquisition of commercial items at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, paragraph (o) (see section III, Determinations of Applicability).

Offerors will be able to make an annual certification through the Online Representations and Certifications Application, if the offeror is registered in the Central Contractor Registration database. Therefore, conforming changes have been made to FAR part 4 and the FAR clause at 52.204-8, Annual Representations and Certifications.

The interim rule includes two additional changes:

- FAR 25.703-2(b)—Adds an authority for termination—FAR part 49 and a cite to FAR 12.403 for termination of commercial contracts.
- FAR 52.225-25(d)—Adds two more examples of trade agreement provisions that may be included in the solicitation to indicate the applicability of trade agreements to the acquisition.

II. 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.

III. Determinations of Applicability

The Federal Acquisition Regulatory Council (FAR Council) has made a determination to apply the requirement of section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, to contracts at or below the simplified acquisition threshold (SAT), contracts for the acquisition of commercial items, and contracts for the acquisition of commercially available off-the-shelf (COTS) items.

1. Applicability to Contracts at or Below the SAT

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater

than the SAT. It is intended to limit the applicability of laws to them. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. Therefore, given that the requirements of sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 were enacted to widen the sanctions against Iran, the FAR Council has determined that it is in the best interest of the Federal Government to apply this rule to all acquisitions including contracts at or below the SAT, as defined at FAR 2.101. An exception for acquisitions at or below the SAT would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

2. Applicability to Contracts for the Acquisition of Commercial Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Therefore, given that the requirements of sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 were enacted to widen the sanctions against Iran, the FAR Council has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, as defined at FAR 2.101. An exception for contracts for the acquisition of commercial items would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

3. Applicability to Contracts for the Acquisition of COTS Items

41 U.S.C. 1907 governs the applicability of laws to contracts for the acquisition of COTS items, and is intended to limit the applicability of

laws to them. 41 U.S.C. 1907 provides that if a provision of law contains criminal or civil penalties, or if the Administrator for Federal Procurement Policy makes a written determination that it is not in the best interest of the Federal Government to exempt contracts for the acquisition of COTS items, the provision of law will apply. Therefore, given that the requirements of sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 were enacted to widen the sanctions against Iran, the Administrator for Federal Procurement Policy has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of COTS items, as defined at FAR 2.101. An exception for contracts for the acquisition of COTS items would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to 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 this rule will only have an impact on an offeror that is exporting sensitive technology to Iran. Domestic entities are generally prohibited from engaging in activity that would cause them to be subject to the procurement bans described in this rule due to current restrictions on trade with Iran (see, *e.g.*, Department of the Treasury Office of Foreign Assets Control regulations at 31 CFR part 560).

Although this rule mainly affects foreign entities, the Regulatory Flexibility Act is for the protection of domestic small entities, not foreign entities. For the definition of “small business,” the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: “(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.”

Therefore, an Initial Regulatory Flexibility Analysis has not been performed because the number of domestic entities significantly impacted by this rule will be minimal. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the 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 2005–54, FAR Case 2010–018), in correspondence.

V. Paperwork Reduction Act

The interim 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).

VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. FAR Case 2010–012 implemented section 102 and partially implemented section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195). This interim rule is necessary because the rule further implements section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, which was signed on July 1, 2010. Section 106 was effective upon enactment, which imposed a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran entered into or renewed on or after September 29, 2010. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 4, 25, 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.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.1202 by revising paragraph (y) to read as follows:

4.1202 Solicitation provision and contract clause.

* * * * *
 (y) 52.225–25, Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran—Representation and Certification.
 * * * * *

PART 25—FOREIGN ACQUISITION

■ 3. Amend section 25.703–1 by—
 ■ a. Revising the section heading;
 ■ b. Adding an introductory paragraph; and
 ■ c. Adding, in alphabetical order, the definition “Sensitive technology”.

The revised and added text reads as follows:

25.703–1 Definitions.

As used in this subpart—

* * * * *
Sensitive technology—
 (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

- (i) To restrict the free flow of unbiased information in Iran; or
- (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and
- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

■ 4. Amend section 25.703–2 by revising paragraphs (a)(1) and (b)(1); and removing paragraph (d).

The revised text reads as follows:

25.703–2 Iran Sanctions Act.

(a) * * *
 (1) As required by the Iran Sanctions Act (50 U.S.C. 1701 note), unless an exception applies in accordance with paragraph (c) of this section, or a waiver

is granted in accordance with 25.703–4, each offeror must certify that the offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

* * * * *

(b) * * *

(1) The contracting officer may terminate the contract in accordance with procedures in part 49, or for commercial items, 12.403.

* * * * *

■ 5. Revise section 25.703–3 to read as follows:

25.703–3 Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, section 106.

(a) The head of an Executive agency may not enter into or extend a contract for the procurement of goods or services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the Excluded Parties List System at <http://www.epls.gov>.

(b) Each offeror must represent that it does not export any 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.

(c) *Exception for trade agreements.* The representation requirement of paragraph (b) of this subsection does not apply with respect to the procurement of eligible products, as defined in section 308(4) of the Trade Agreements Act of 1974 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b)) (see subpart 25.4).

■ 6. Add section 25.703–4 to read as follows:

25.703–4 Waiver.

(a) An agency or contractor seeking a waiver of these requirements, consistent with section 6(b)(5) of the Iran Sanctions Act or section 401(b) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), and the Presidential Memorandum of September 23, 2010 (75 FR 67025), shall submit the request to the Office of Federal Procurement Policy, allowing sufficient time for review and approval.

(b) Agencies may request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled, if warranted.

(1) A class waiver may be requested only when the class of supplies or equipment is not available from any

other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request must be reviewed and cleared by the agency head.

(c) In general, all waiver requests should include the following information:

(1) Agency name, complete mailing address, and point of contact name, telephone number, and email address.

(2) Offeror’s name, complete mailing address, and point of contact name, telephone number, and email address.

(3) Description/nature of product or service.

(4) The total cost and length of the contract.

(5) Justification, with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that—

(i) Conducts activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; or

(ii) Exports 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.

(6) Documentation regarding the offeror’s past performance and integrity (see the Past Performance Information Retrieval System and the Federal Awardee Performance Information and Integrity System at <http://www.ppirs.gov>, and any other relevant information).

(7) Information regarding the offeror’s relationship or connection with other firms that—

(i) Conduct activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; or

(ii) Export 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.

(8) Describe—

(i) The activities in which the offeror is engaged for which sanctions may be imposed under section 5 of the Iran Sanctions Act; or

(ii) The sensitive technology and the entity or individual to which it was exported (*i.e.*, the government of Iran or an entity or individual owned or controlled by, or acting on behalf or at the direction of, the government of Iran).

■ 7. Amend section 25.1103 by revising paragraph (e) to read as follows:

25.1103 Other provisions and clauses.

* * * * *

(e) The contracting officer shall include in all solicitations the provision at 52.225–25, Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran—Representation and Certification.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.204–8 by revising the date of the provision and paragraph (c)(1)(xx) to read as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (NOV 2011)

* * * * *

(c) * * *

(1) * * *

(xx) 52.225–25, Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran—Representation and Certification. This provision applies to all solicitations.

* * * * *

■ 9. Revise section 52.212–3 by—
 ■ a. Revising the date of the provision;
 ■ b. In paragraph (a), adding, in alphabetical order, the definition “Sensitive technology”; and
 ■ c. Revising paragraph (o).

The revised and added text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offer Representations and Certifications—Commercial Items (NOV 2011)

* * * * *

(a) *Definitions.* * * *

* * * * *

Sensitive technology—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

* * * * *

(o) *Sanctioned activities relating to Iran.* (1) The offeror shall email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(2) *Representation and Certification.* Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any 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; and

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (e.g., 52.212–3(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

* * * * *

■ 10. Revise section 52.225–25 to read as follows:

52.225–25 Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran—Representation and Certification.

As prescribed at 25.1103(e), insert the following provision:

Prohibition on Contracting With Entities Engaging in Sanctioned Activities Relating to Iran—Representation and Certification (NOV 2011)

(a) *Definitions.* As used in this provision—
Person—

(1) Means—

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

Sensitive technology—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(b) The offeror shall email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with 25.703–4, by submission of its offer, the offeror—

(1) Represents, to the best of its knowledge and belief, that the offeror does not export any 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; and

(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies.

(d) *Exception for trade agreements.* The representation requirement of paragraph (c)(1) and the certification requirement of paragraph (c)(2) of this provision do not apply if—

(1) This solicitation includes a trade agreements notice or certification (e.g., 52.225–4, 52.225–6, 52.225–12, 52.225–24, or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

[FR Doc. 2011–27784 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 8, 12, 16, 19, 38, and 52

[FAC 2005–54; FAR Case 2011–024; Item VI; Docket 2011–0024, Sequence 01]

RIN 9000–AM12

Federal Acquisition Regulation; Set-Asides for Small Business

AGENCY: 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 section 1331 of the Small Business Jobs Act of 2010 (Jobs Act). Section 1331 addresses set-asides of task- and delivery-orders under multiple-award contracts, partial set-asides under multiple-award contracts, and the reserving of one or more multiple-award contracts that are awarded using full and open competition. Within this same context,

section 1331 also addresses the Federal Supply Schedules Program managed by GSA, DoD, GSA, and NASA are coordinating with the Small Business Administration (SBA) on the development of an SBA proposed rule that will provide greater detail regarding implementation of section 1331 authorities.

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

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before January 3, 2012 to be considered in the formation of a final rule.

Applicability Date: Contracting officers are encouraged to modify, on a bilateral basis, existing multiple-award contracts in accordance with FAR 1.108(d)(3), if the remaining period of performance extends at least six months after the effective date, and the amount of work or number of orders expected under the remaining performance period is substantial.

ADDRESSES: Submit comments identified by FAC 2005–54, FAR Case 2011–024, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2011–024” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2011–024.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2011–024” on your attached document.

- *Fax:* (202) 501–4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–54, FAR Case 2011–024, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364, 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 2011–024.

SUPPLEMENTARY INFORMATION:

I. Background

Over the past 15 years, Federal agencies have increasingly used multiple award contracts—including the Federal Supply Schedules managed by GSA, governmentwide acquisition contracts, multi-agency contracts, and agency-specific indefinite-delivery, indefinite-quantity (IDIQ) contracts—to acquire a wide range of products and services. This trend has created challenges for agencies seeking to provide maximum opportunity for small businesses. Although set-asides are one of the most effective tools agencies have at their disposal to help small businesses participate in Government contracting opportunities, the FAR is silent on how to apply set-asides at the task-or-delivery order level.

In September 2010, the Interagency Task Force on Small Business Contracting, created by the President in April of that year, issued a report recommending that the rules on set-asides, including for multiple-award contracts, be clarified, and that legislation be developed where it is determined that statutory changes are warranted. The Task Force noted that set-asides accounted for approximately half of all small business contract awards in FY 2009, yet “there has been no attempt to create a comprehensive policy for orders placed under either general task- and delivery-order contracts or schedule contracts that rationalizes and appropriately balances the need for efficiency with the need to maximize opportunities for small businesses.” For a copy of the report, go to http://www.sba.gov/sites/default/files/contracting_task_force_report_0.pdf.

The same month as the Task Force report was issued, the President signed the Jobs Act (Pub. L. 111–240) into law to protect the interests of small businesses and expand their opportunities in the Federal marketplace. Section 1331 of the Jobs Act amends section 15 of the Small Business Act (Pub. L. 85–536) to add a new subsection (r) stating, in pertinent part, that:

The Administrator, Office of Federal Procurement Policy (OFPP) and the Administrator, U.S. Small Business Administration (SBA), in consultation with the Administrator of the General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

(1) Set aside part or parts of a multiple-award contract for small business concerns, including the subcategories of small business

concerns identified in subsection (g)(2) of the Small Business Act;

(2) Notwithstanding the fair opportunity requirements under section 2304c(b) of Title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(b)) (subsequently recodified as 41 U.S.C. 4106), set aside orders placed against multiple-award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2) of the Small Business Act; and

(3) Reserve one or more contract awards for small business concerns under full and open multiple-award procurements, including the subcategories of small business concerns identified in subsection (g)(2) of the Small Business Act.

SBA and OFPP, which are vested under section 1331 with the authority to issue regulations, in consultation with the Administrator of GSA, have requested that DoD, GSA, and NASA publish this interim rule in order to provide agencies with guidance that they can use in taking advantage of this important tool, while SBA completes the drafting and coordination of a proposed rule that will set forth more specific guidance. This interim rule amends—

- FAR subpart 8.4 to make clear that order set-asides may be used in connection with the placement of orders and blanket purchase agreements under Federal Supply Schedules;

- FAR subpart 12.2 to acknowledge that discretionary set-asides may be used if placing an order under a multiple-award contract;

- FAR subpart 16.5 to acknowledge that set-asides may be used in connection with the placement of orders under multiple-award contracts, notwithstanding the requirement to provide each contract holder a fair opportunity to be considered;

- FAR part 19 to add a new section authorizing agencies to (1) use set-asides under multiple-award contracts—including set-asides for small businesses participating in the small business programs identified in FAR 19.000(a)(3); and (2) reserve one or more contract awards under multiple-award contracts for small businesses, including any of the socio-economic groups; and

- FAR subpart 38.1 to add a reference to FAR 8.405–5 to make clear that order set-asides may be used in connection with the placement of orders and blanket purchase agreements under Federal Supply Schedules.

This interim rule also amends existing solicitation provisions and contract

clauses, including FAR 52.219–6 to provide notice of total set-asides and partial set-asides under multiple-award contracts, and revises existing contract clauses to address limitations on subcontracting for small businesses under multiple award contracts.

DoD, GSA, and NASA expect agencies to take advantage of set-asides under multiple-award contracts by: (1) Identifying existing or prospective multiple-award contracts with small business contract holders where order set-asides may be appropriate, and (2) maximizing opportunities for small business by utilizing order set-asides under the Federal Supply Schedule Program.

II. Executive Order 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.

III. Regulatory Flexibility Act

The change may 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.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The Administrator of the Office of Management and Budget's Office of Federal Procurement Policy requested that DoD, GSA, and NASA amend the FAR to provide preliminary implementation of section 1331 of the Small Business Jobs Act of 2010 (Jobs Act).

DoD, GSA, and NASA are amending the FAR to implement the authority to (1) set aside part or parts of a multiple-award contract for small business concerns; (2) set aside orders placed against multiple-award contracts, including Federal Supply Schedules, for small business concerns; and (3) reserve one or more contract awards under full and open multiple-award procurements, for small business concerns.

The objective of this rule is to provide an additional tool for agencies to increase opportunities for small business to compete in the Federal marketplace. The statutory authority for this action is Small Business

Jobs Act of 2010, Pub. L. 111–240, 15 U.S.C. 644(r).

This rule may have a significant positive economic impact on any small business entity that wishes to participate in the Federal procurement arena. Analysis of the Central Contractor Registration database indicates there are over 351,203 small business registrants that can potentially benefit from the implementation of this rule.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts 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 2005–54, FAR Case 2011–024) in correspondence.

IV. Paperwork Reduction Act

The interim 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).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 1331 of the Jobs Act calls for the issuance, within one year of the law’s enactment (September 27, 2010), of “a regulation, to establish guidance under which Federal agencies may, at their discretion—” set aside task-and-delivery orders under multiple-award contracts, use partial set-asides under multiple-award contracts, and reserve one or more contracts under procurements awarded using full and open competition.

Despite the progress agencies have made over the past two years in increasing the amount of contracting

dollars awarded to small businesses, the set-aside authority for multiple-award contracts conveyed by this interim rule may serve as the linchpin to closing the remaining shortfall agencies are experiencing in meeting their small business contracting goals. As such, valuable opportunities to help small businesses through set-asides and reserves under multiple-award contracts will be lost while the rulemaking process moves forward. Issuing an interim rule that is effective upon publication, prior to the receipt of public comment, will allow agencies to immediately begin taking advantage of set-asides under multiple-award contracts, as envisioned by the Jobs Act, to increase awards to small businesses. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 8, 12, 16, 19, 38, 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.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 12, 16, 19, 38, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 8, 12, 16, 19, 38, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 8.405–5 by revising paragraph (a); and redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and adding a new paragraph (b) to read as follows:

8.405–5 Small business.

(a) Although the preference programs of part 19 are not mandatory in this subpart, in accordance with section 1331 of Public Law 111–240 (15 U.S.C. 644(r))—

- (1) Ordering activity contracting officers may, at their discretion—
 - (i) Set aside orders for any of the small business concerns identified in 19.000(a)(3); and
 - (ii) Set aside BPAs for any of the small business concerns identified in 19.000(a)(3).
- (2) When setting aside orders and BPAs—

(i) Follow the ordering procedures for Federal Supply Schedules at 8.405–1, 8.405–2, and 8.405–3; and

(ii) The specific small business program eligibility requirements identified in part 19 apply.

(b) Orders placed against schedule contracts may be credited toward the ordering activity’s small business goals. For purposes of reporting an order placed with a small business schedule contractor, an ordering agency may only take credit if the awardee meets a size standard that corresponds to the work performed. Ordering activities should rely on the small business representations made by schedule contractors at the contract level.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 12.207 by revising paragraph (b)(1)(i)(C) to read as follows:

12.207 Contract type.

* * * * *

- (b) * * *
- (1) * * *
- (i) * * *

(C) The fair opportunity procedures in 16.505 (including discretionary small business set-asides under 16.505(b)(2)(i)(F)), if placing an order under a multiple-award delivery-order contract; and

* * * * *

PART 16—TYPES OF CONTRACTS

■ 4. Amend section 16.505 by—

- a. Revising the introductory text of paragraph (b);
- b. Adding paragraph (b)(2)(i)(F);
- c. Revising the introductory text of paragraph (b)(2)(ii); and
- d. Revising paragraph (b)(2)(ii)(D)(5).

The revised and added text reads as follows:

16.505 Ordering.

* * * * *

(b) Orders under multiple-award contracts—

* * * * *

- (2) * * *
- (i) * * *

(F) In accordance with section 1331 of Public Law 111–240 (15 U.S.C. 644(r)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in 19.000(a)(3). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in part 19 apply.

(ii) The justification for an exception to fair opportunity shall be in writing as

specified in paragraphs (b)(2)(ii)(A) or (B) of this section. No justification is needed for the exception described in paragraph (b)(2)(i)(F) of this section.

* * * * *

(D) * * *

(5) The posting requirement of this section does not apply—

(i) When disclosure would compromise the national security (e.g., would result in disclosure of classified information) or create other security risks; or

(ii) To a small business set-aside under paragraph (b)(2)(i)(F).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.502–4 and 19.502–5 [Redesignated as 19.502–5 and 19.502–6]

■ 5a. Redesignate sections 19.502–4 and 19.502–5 as sections 19.502–5 and 19.502–6, respectively.

■ 5b. Add a new section 19.502–4 to read as follows:

19.502–4 Multiple-award contracts and small business set-asides.

In accordance with section 1331 of Public Law 111–240 (15 U.S.C. 644(r)) contracting officers may, at their discretion—

(a) When conducting multiple-award procurements using full and open competition, reserve one or more contract awards for any of the small business concerns identified in 19.000(a)(3). The specific program eligibility requirements identified in this part apply;

(b) Set aside part or parts of a multiple-award contract for any of the small business concerns identified in 19.000(a)(3). The specific program eligibility requirements identified in this part apply; or

(c) Set aside orders placed under multiple-award contracts for any of the small business concerns identified in 19.000(a)(3). For orders placed under the Federal Supply Schedules Program see 8.405–5. For all other multiple-award contracts see 16.505.

* * * * *

■ 6. Amend section 19.508 by revising paragraphs (c), (d), and (e); and adding paragraph (f) to read as follows:

19.508 Solicitation provisions and contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 52.219–6, Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides or reserves. This includes multiple-award

contracts when orders may be set aside for any of the small business concerns identified in 19.000(a)(3), as described in 8.405–5 and 16.505(b)(2)(i)(F). The clause at 52.219–6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f)(4) and (5)). Use the clause at 52.219–6 with its Alternate II when including FPI in the competition in accordance with 19.504.

(d) The contracting officer shall insert the clause at 52.219–7, Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides. This includes part or parts of multiple-award contracts, including those described in 38.101. The clause at 52.219–7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f)(4) and (5)). Use the clause at 52.219–7 with its Alternate II when including FPI in the competition in accordance with 19.504.

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside or reserved for small business and the contract amount is expected to exceed \$150,000. This includes multiple-award contracts when orders may be set aside for small business concerns, as described in 8.405–5 and 16.505(b)(2)(i)(F).

(f) The contracting officer shall insert the clause at 52.219–13, Notice of Set-Aside of Orders, in solicitations and contracts to notify offerors if an order or orders are to be set aside for any of the small business concerns identified in 19.000(a)(3).

■ 7. Amend section 19.811–3 by revising paragraph (e) to read as follows:

19.811–3 Contract clauses.

* * * * *

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in any solicitation and contract resulting from this subpart. This includes multiple-award contracts when orders may be set aside for 8(a) concerns as described in 8.405–5 and 16.505(b)(2)(i)(F).

■ 8. Amend section 19.1304 by revising paragraphs (b) and (c) to read as follows:

19.1304 Exclusions.

* * * * *

(b) Orders under indefinite-delivery contracts (see subpart 16.5). (But see 16.505(b)(2)(i)(F) for discretionary set-asides of orders);

(c) Orders against Federal Supply Schedules (see subpart 8.4). (But see 8.405–5 for discretionary set-asides of orders);

* * * * *

19.1308 [Amended]

■ 9. Amend section 19.1308 by removing from the first sentence of paragraph (b) “of Total Hubzone” and adding “of Hubzone” in its place.

■ 10. Amend section 19.1309 by revising the introductory text of paragraph (a) to read as follows:

19.1309 Contract clauses.

(a) The contracting officer shall insert the clause 52.219–3, Notice of HUBZone Set-Aside or Sole Source Award, in solicitations and contracts for acquisitions that are set aside, or reserved for, or awarded on a sole source basis to, HUBZone small business concerns under 19.1305 or 19.1306. This includes multiple-award contracts when orders may be set aside for HUBZone small business concerns as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

■ 11. Amend section 19.1404 by revising paragraphs (b) and (c) to read as follows:

19.1404 Exclusions.

* * * * *

(b) Orders under indefinite-delivery contracts (see subpart 16.5). (But see 16.505(b)(2)(i)(F) for discretionary set-asides of orders);

(c) Orders against Federal Supply Schedules (see subpart 8.4). (But see 8.405–5 for discretionary set-asides of orders); or

* * * * *

■ 12. Revise section 19.1407 to read as follows:

19.1407 Contract clauses.

The contracting officer shall insert the clause 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside, in solicitations and contracts for acquisitions that are set aside or reserved for, or awarded on a sole source basis to, service-disabled veteran-owned small business concerns under 19.1405 and 19.1406. This includes multiple-award contracts when orders may be set aside for service-disabled veteran-owned small business concerns as described in 8.405–5 and 16.505(b)(2)(i)(F).

■ 13. Amend section 19.1504 by revising paragraphs (c) and (d) to read as follows:

19.1504 Exclusions.

* * * * *

(c) Orders under indefinite-delivery contracts (see subpart 16.5). (But see 16.505(b)(2)(i)(F) for discretionary set-asides of orders); or (d) Orders against Federal Supply Schedules (see subpart 8.4). (But see 8.405–5 for discretionary set-asides of orders.)

■ 14. Amend section 19.1506 by revising paragraphs (a) and (b) to read as follows:

19.1506 Contract clauses.

(a) The contracting officer shall insert the clause 52.219–29, Notice of Set-Aside for Economically Disadvantaged Women-owned Small Business Concerns, in solicitations and contracts for acquisitions that are set aside or reserved for economically disadvantaged women-owned small business (EDWOSB) concerns under 19.1505(b). This includes multiple-award contracts when orders may be set aside for EDWOSB concerns as described in 8.405–5 and 16.505(b)(2)(i)(F).

(b) The contracting officer shall insert the clause 52.219–30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, in solicitations and contracts for acquisitions that are set aside or reserved for women-owned small business (WOSB) concerns under 19.1505(c). This includes multiple-award contracts when orders may be set aside for WOSB concerns eligible under the WOSB program as described in 8.405–5 and 16.505(b)(2)(i)(F).

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

38.101 [Amended]

■ 15. Amend section 38.101 by removing from paragraph (e) “(except see 8.404).” and adding “(except see 8.404 and 8.405–5).” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. Amend section 52.212–5 by—
 ■ a. Revising the date of the clause and paragraphs (b)(8) and (b)(11);
 ■ b. Redesignating paragraphs (b)(15) through (b)(49) as paragraphs (b)(16) through (b)(50), respectively;
 ■ c. Adding a new paragraph (b)(15); and
 ■ d. Revising newly redesignated paragraphs (b)(16), (b)(21), (b)(23), and (b)(24).

The revised and added text reads as follows:

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

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (NOV 2011)

* * * * *

(b) * * *
 __ (8) 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award (NOV 2011) (15 U.S.C. 657a).

* * * * *
 __ (11)(i) 52.219–6, Notice of Total Small Business Set-Aside (NOV 2011) (15 U.S.C. 644).

__ (ii) Alternate I (NOV 2011).
 __ (iii) Alternate II (NOV 2011).

* * * * *
 __ (15) 52.219–13, Notice of Set-Aside of Orders (NOV 2011) (15 U.S.C. 644(r)).

__ (16) 52.219–14, Limitations on Subcontracting (NOV 2011) (15 U.S.C. 637(a)(14)).

* * * * *
 __ (21) 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011) (15 U.S.C. 657f).

* * * * *
 __ (23) 52.219–29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns (NOV 2011).

__ (24) 52.219–30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (NOV 2011).

* * * * *
 ■ 17. Amend section 52.219–3 by—
 ■ a. Revising the section heading, the clause heading, and the date of the clause;
 ■ b. Redesignating paragraphs (b) through (f) as paragraphs (c) through (g), respectively;
 ■ c. Adding a new paragraph (b);
 ■ d. Removing from the newly redesignated paragraph (e) “in paragraph (c) of” and adding “in paragraph (d) of” in its place;
 ■ e. Removing from the newly redesignated paragraph (f) “Paragraphs (e)(1) and (e)(2) of” and adding “Paragraphs (f)(1) and (f)(2) of” in its place; and
 ■ f. In Alternate I, revising the date and introductory text; and redesignating paragraphs (c)(3) and (c)(4) as paragraphs (d)(3) and (d)(4), respectively.

The revised and added text reads as follows:

52.219–3 Notice of HUBZone Set-Aside or Sole Source Award.

* * * * *

Notice of HUBZone Set-Aside or Sole Source Award (NOV 2011)

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside or reserved for, or awarded on a sole source basis to, HUBZone small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for HUBZone small business concerns; and

(3) Orders set-aside for HUBZone small business concerns under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

Alternate I (NOV 2011). As prescribed in 19.1309(a)(1), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

* * * * *

■ 18. Amend section 52.219–6 by—
 ■ a. Revising the date of the clause;
 ■ b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
 ■ c. Adding a new paragraph (b);
 ■ d. In Alternate I, revising the date; and removing from the end of the paragraph “delete paragraph (c).” and adding “delete paragraph (d).” in its place; and
 ■ e. In Alternate II, revising the date and introductory text; and redesignating paragraph (b) as paragraph (c), respectively.

The revised and added text reads as follows:

52.219–6 Notice of Total Small Business Set-Aside.

* * * * *

Notice of Total Small Business Set-Aside (NOV 2011)

* * * * *

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been totally set aside or reserved for small business concerns; and

(2) Orders set aside for small business concerns under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

Alternate I (NOV 2011). * * *

Alternate II (NOV 2011). As prescribed in 19.508(c), substitute the following paragraph (c) for paragraph (c) of the basic clause:

* * * * *

■ 19. Add section 52.219–13 to read as follows:

52.219–13 Notice of Set-Aside of Orders.

As prescribed in 19.508(f), insert the following clause:

Notice of Set-Aside of Orders (Nov 2011)

The Contracting Officer will give notice of the order or orders, if any, to be set aside for small business concerns identified in 19.000(a)(3) and the applicable small

business program. This notice, and its restrictions, will apply only to the specific orders that have been set aside for any of the small business concerns identified in 19.000(a)(3).
(End of clause)

- 20. Amend section 52.219–14 by—
- a. Revising the date of the clause;
- b. Redesignating paragraph (b) as paragraph (c); and
- c. Adding a new paragraph (b) to read as follows:

52.219–14 Limitations on Subcontracting.
* * * * *

Limitations on Subcontracting (Nov 2011)
* * * * *

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside or reserved for small business concerns or 8(a) concerns;
- (2) Part or parts of a multiple-award contract that have been set aside for small business concerns or 8(a) concerns; and
- (3) Orders set aside for small business or 8(a) concerns under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

- 21. Amend section 52.219–27 by—
- a. Revising the section heading, the clause heading, and the date of the clause;
- b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively; and
- c. Adding a new paragraph (b).
The revised and added text reads as follows:

52.219–27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside.
* * * * *

Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011)
* * * * *

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside or reserved for service-disabled veteran-owned small business concerns;
- (2) Part or parts of a multiple-award contract that have been set aside for service-disabled veteran-owned small business concerns; and
- (3) Orders set aside for service-disabled veteran-owned small business concerns under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

- 22. Amend section 52.219–29 by—
- a. Revising the section heading, the clause heading, and the date of the clause;
- b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;

- c. Adding a new paragraph (b); and
- d. Removing from the newly redesignated paragraph (e)(4) “paragraph (c) above” and adding “paragraph (d) above” in its place.

The revised and added text reads as follows:

52.219–29 Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns.
* * * * *

Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns (Nov 2011)
* * * * *

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside or reserved for EDWOSB concerns;
- (2) Part or parts of a multiple-award contract that have been set aside for EDWOSB concerns; and
- (3) Orders set aside for EDWOSB concerns under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

- 23. Amend section 52.219–30 by—
- a. Revising the section heading, the clause heading, and the date of the clause;
- b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;
- c. Adding a new paragraph (b); and
- d. Removing from the newly redesignated paragraph (e)(4) “paragraph (c) above” and adding “paragraph (d) above” in its place.
The revised and added text reads as follows:

52.219–30 Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.
* * * * *

Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Nov 2011)
* * * * *

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside or reserved for WOSB concerns eligible under the WOSB Program;
- (2) Part or parts of a multiple-award contract that have been set aside for WOSB concerns eligible under the WOSB Program; and
- (3) Orders set aside for WOSB concerns eligible under the WOSB Program, under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

[FR Doc. 2011–27786 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 Part 25

[FAC 2005–54; FAR Case 2009–041; Item VII; Docket 2010–0105, Sequence 1]

RIN 9000–AL65

Federal Acquisition Regulation; Sudan Waiver Process

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 revise the prohibition on contracting with entities that conduct restricted business operations in Sudan. This 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. The rule also describes the consultation process that will be used by the Office of Federal Procurement Policy (OFPP) in support of the waiver request review.

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

FOR FURTHER INFORMATION CONTACT: Cecelia L. Davis, Procurement Analyst, at (202) 219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–54, FAR Case 2009–041.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 75 FR 62069 on October 7, 2010, to revise FAR 25.702, Prohibition on contracting with entities that conduct restricted business operations in Sudan, to add 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. The rule also describes the consultation process that will be used by OFPP in support of the waiver review. No comments were received by the close of

the public comment period on December 6, 2010.

DoD, GSA, and NASA published a final rule, FAR Case 2008–004, Prohibition on Restricted Business Operations in Sudan and Imports from Burma, in the **Federal Register** at 74 FR 40463 on August 11, 2009, amending the FAR to implement section 6 of the Sudan Accountability and Divestment Act of 2007 (the Act), Public Law 110–174.

Section 6(a) of the Act requires that each contract entered into by an Executive agency include a certification that the contractor does not conduct certain business operations in Sudan as described in section 3(d) of the Act. Pursuant to section 6(c), the President may waive this certification requirement on a case-by-case basis if the President determines and certifies to the appropriate congressional committees that it is in the national interest to do so.

Section 6 of the Act was implemented in the FAR but did not include a waiver consultation process and specific criteria for the waiver request. With the addition of these changes, the FAR will provide consistent guidance on specific criteria that must be included in the waiver request for consideration, and establish a consultation process to ensure all waiver requests are reviewed by the appropriate agency experts.

OFPP will be required to consult with the President's National Security Council, Office of African Affairs and the Department of State Sudan Office and Sanctions Office on foreign policy matters relevant to the waiver request and include this information in the recommendation to the President. All waiver requests must clearly explain why the product or service must be procured from the offeror for which the waiver is requested and why it is in the national interest to waive the statutory prohibition against contracting with an offeror that conducts restricted business operations in Sudan. In addition, the waiver request must address any humanitarian efforts engaged in by the offeror, the human rights impact of doing business with that offeror, and the extent of the offeror's business operations in Sudan. All of the information required to be included in the waiver request will be considered in determining whether to recommend that the President waive the prohibition.

Additionally, individual and class waiver requests will be considered for a specific contract or class of contracts, as long as the waiver request has been reviewed and cleared by the agency head prior to submitting it to OFPP and the request includes the appropriate

waiver information specified at FAR 25.702–4(c)(3). However, a waiver will not be issued for an indefinite period of time, and may be cancelled, if warranted.

In accordance with section 6 of the Act, the Administrator of OFPP is required to submit semiannual reports, on April 15th and October 15th, to Congress, on waivers approved by the President.

II. 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.

III. 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 does not impose any additional requirements on small businesses.

IV. 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 Part 25

Government procurement.

Dated: October 21, 2011.

Laura Auletta,

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 25.702–4 by revising paragraph (b); and adding paragraphs (c) and (d) to read as follows:

25.702–4 Waiver.

* * * * *

(b) An agency seeking waiver of the requirement shall submit the request to the Administrator of the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP shall consult with the President's National Security Council, Office of African Affairs, and the Department of State Sudan Office and Sanctions Office to assess foreign policy aspects of making a national interest recommendation.

(c) Agencies may request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled if warranted.

(1) A class waiver may be requested only when the class of supplies is not available from any other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request must be reviewed and cleared by the agency head.

(3) All waiver requests must include the following information:

- (i) Agency name, complete mailing address, and point of contact name, telephone number, and email address;
- (ii) Offeror's name, complete mailing address, and point of contact name, telephone number, and email address;
- (iii) Description/nature of product or service;

(iv) The total cost and length of the contract;

(v) Justification, with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that conducts restricted business operations in Sudan, including consideration of foreign policy aspects identified in consultation(s) pursuant to 25.702–4(b);

(vi) Documentation regarding the offeror's past performance and integrity (see the Past Performance Information Retrieval System including the Federal Awardee Performance Information and Integrity System at <http://www.ppirs.gov> and any other relevant information);

(vii) Information regarding the offeror's relationship or connection with

other firms that conduct prohibited business operations in Sudan; and

(viii) Any humanitarian efforts engaged in by the offeror, the human rights impact of doing business with the offeror for which the waiver is requested, and the extent of the offeror's business operations in Sudan.

(d) The consultation in 25.702-4(b) and the information in 25.702-4(c)(3) will be considered in determining whether to recommend that the President waive the requirement of subsection 25.702-2. In accordance with section 6(c) of the Sudan Accountability and Divestment Act of 2007, OFPP will semiannually submit a report to Congress, on April 15th and October 15th, on the waivers granted.

[FR Doc. 2011-27788 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 25 and 52

[FAC 2005-54; FAR Case 2011-014; Item VIII; Docket 2011-0014, Sequence 1]

RIN 9000-AM11

Federal Acquisition Regulation; Successor Entities to the Netherlands Antilles

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 revise the definitions of "Caribbean Basin country" and "designated country" due to the change in status of the islands that comprised the Netherlands Antilles.

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

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 at (202) 501-4755. Please cite FAC 2005-54, FAR Case 2011-014.

SUPPLEMENTARY INFORMATION:

I. Background

The Netherlands Antilles was designated as a beneficiary country under the Caribbean Basin Initiative (see 19 U.S.C. 2702). According to the initiative, successor political entities remain eligible as beneficiary countries. On October 10, 2010, Curacao and Sint Maarten became autonomous territories of the Kingdom of the Netherlands. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands. Additional information about this change is available at <http://www.state.gov/r/pa/ei/bgn/22528.htm>.

With this change, the definitions have been revised to replace "Netherlands Antilles" with the five separate successor entities—Bonaire, Curacao, Saba, Sint Eustatius, and Sint Maarten.

This final rule amends definitions of "Caribbean Basin country" and "designated country" at FAR 25.003, and FAR clauses 52.225-5, Trade Agreements; 52.225-11, Buy American Act—Construction Materials under Trade Agreements; and 52.225-23, Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

II. 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.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 and does not require publication for public comment.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection

requirements to the paperwork burden previously approved under OMB Control Number 9000-0141 titled: Buy American Act—Construction.

List of Subjects in 48 CFR Parts 25 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.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

■ 2. Amend section 25.003 by revising the definition "Caribbean Basin country" and paragraph (4) in the definition "Designated country" to read as follows:

25.003 Definitions.

* * * * *

Caribbean Basin country means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago.

* * * * *

Designated country * * *

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212-5 by revising the date of the clause and paragraph (b)(39) to read as follows:

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

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (NOV 2011)

* * * * *
(b) * * *

(39) 52.225–5, Trade Agreements (NOV 2011) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

■ 4. Amend section 52.225–5 by revising the date of the clause; and in paragraph (a), by revising paragraph (4) in the definition “Designated country” to read as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (NOV 2011)

(a) *Definitions.* * * *

* * * * *

Designated country * * *

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

* * * * *

■ 5. Amend section 52.225–11 by revising the date of the clause; and in paragraph (a), by revising paragraph (4) in the definition “Designated country” to read as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

Buy American Act—Construction Materials Under Trade Agreements (NOV 2011)

(a) *Definitions.* * * *

* * * * *

Designated country * * *

(4) A Caribbean Basin country ((Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

* * * * *

■ 6. Amend section 52.225–23 by revising the date of the clause, and paragraph (4) in the definition “Designated country” to read as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements (NOV 2011)

* * * * *
Designated country * * *

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

* * * * *

[FR Doc. 2011–27789 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 Part 31

[FAC 2005–54; FAR Case 2009–006; Item IX; Docket 2010–0084, Sequence 1]

RIN 9000–AL39

Federal Acquisition Regulation; Labor Relations Costs

AGENCY: 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 implement the Executive Order (E.O.) on 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.

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

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221, 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 2009–006.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 75 FR 19345 on April 14, 2010, to implement E.O. 13494, Economy in Government Contracting, dated January 30, 2009, published in the **Federal Register** at 74 FR 6101 on February 4, 2009, as amended on October 30, 2009 (published in the **Federal Register** at 74 FR 57239 on November 5, 2009). This E.O. promotes economy and efficiency in Government contracting by providing that certain costs that are not directly related to the contractor’s provision of goods and services to the Government shall be unallowable for payment, thereby directly reducing Government expenditures and reinforcing the fiscally responsible handling of taxpayer funds. Specifically, this E.O. states that the costs of the activities of preparing and distributing materials, hiring or consulting legal counsel or consultants, holding meetings (including paying the salaries of the attendees at meetings held for this purpose), and planning or conducting activities by managers, supervisors, or union representatives during work hours, when they are undertaken to persuade employees to exercise or not to exercise, or concern the manner of exercising, rights to organize and bargain collectively are unallowable costs.

In order to implement E.O. 13494, DoD, GSA, and NASA have amended FAR 31.205–21, the cost principle addressing labor relations costs. Currently, this cost principle states that costs incurred in maintaining satisfactory relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable. To implement the requirements of the E.O., DoD, GSA, and NASA issued a proposed rule that would amend this cost principle by adding a new paragraph addressing the handling of persuader activities—that is, activity involving the persuading of employees to exercise or not exercise their rights to organize and bargain collectively. By doing so, the proposed rule differentiated the handling of costs incurred through persuader activities, which are unallowable, from those incurred in maintaining satisfactory labor relations, which remain allowable. Specifically, the proposed rule stated that the costs of any activities undertaken to persuade employees, of any entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of

the employees' own choosing are unallowable. The proposed rule also identified examples of activities the costs of which are unallowable when performed in connection with persuader activities: (1) Preparing and distributing materials, (2) hiring or consulting legal counsel or consultants, (3) meetings (including paying the salaries of the attendees at meetings held for this purpose), and (4) planning or conducting activities by managers, supervisors, or union representatives during work hours. Based on a careful review of public comments, discussed below, DoD, GSA, and NASA have concluded that the proposed rule should be finalized with just one minor editorial change. Consistent with section 8 of the E.O. and standard FAR conventions (see FAR 1.108(d)), this rule shall apply to contracts resulting from solicitations issued on or after the rule's effective date.

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. Fourteen respondents submitted comments on the proposed rule. These responses included a total of 28 comments on 12 issues. Several respondents strongly supported the rule, with one respondent urging the proposed rule be finalized as soon as possible. Other respondents raised concerns which are addressed below.

A. Favors Unions

Comment: Two respondents asserted that the rule favors unions and penalizes contractors.

Response: Under this rule, the Government will treat as unallowable the costs of specified "persuader" activities that are not directly related to the contractor's provision of goods and services to the Government, in order to promote economy and efficiency in Government contracting. Moreover, certain costs undertaken by contractors that are incurred in maintaining satisfactory relations between the contractor and its employees continue to be allowable, whether or not the contractor's employees are represented by a union. In addition, certain activities undertaken with the union that are not otherwise unlawful, including costs associated with negotiating or administering collective bargaining agreements, are allowable under section 3 of E.O. 13494 and paragraph (a) of FAR 31.205-21 because they involve the maintenance of

satisfactory labor relations between the contractor and its employees. Costs related to the development, implementation, and enforcement of neutrality agreements would also be allowable provided that none of the costs attributed to the agreements include unreasonable costs or costs of unallowable persuader activities or activities that are otherwise unlawful. (See comment "F" for additional discussion of neutrality agreements.) No change to the rule has been made in response to this comment.

B. Prohibits Certain Protected Contractor Activities

Comment: A number of respondents interpreted the rule to prohibit certain protected contractor activities, such as an employers' right to engage in speech that does not violate the National Labor Relations Act (NLRA). See 29 U.S.C. 158(c). As such, these respondents argued that E.O. 13494 is preempted by the NLRA, particularly in light of *Chamber of Commerce v. Brown*, 554 U.S. 60 (2008), in which the United States Supreme Court held that a State statute was preempted by the NLRA because it attempted regulation of speech about union-related activity that was within the zone of conduct intended by Congress to be left to market forces.

Response: This rule does not prohibit or otherwise regulate persuader activities; it only disallows the reimbursement of the costs of these activities under Federal contracts. The purpose of the rule is to promote economy and efficiency in Government contracting by excluding certain costs from reimbursement by the Government that are not directly related to the contractors' provision of goods and services to the Government. By doing so, the rule promotes the fiscally responsible handling of taxpayer funds. The State law at issue in *Brown* was rooted in "California's policy judgment that partisan employer speech necessarily interferes with an employee's choice about whether to join or to be represented by a union." 554 U.S. at 69 (internal quotation omitted). By contrast here, neither the E.O. nor the rule in any way restrict the manner in which recipients of Federal funds may expend funds they receive from the Government or any other of their own funds, including funds a recipient received as a Government contractor for providing goods and services under Federal contracts. Instead, this rule preserves a contractor's freedom to spend its own funds however it wishes, whereas the State statute in *Brown* made it exceedingly difficult for employers to

demonstrate that they had not used State funds for non-reimbursable purposes. (554 U.S. at 71-73). Moreover, unlike the State statute in *Brown*, this rule does not contain a "formidable enforcement scheme" involving "compliance costs and litigation risks * * * calculated to make union-related advocacy prohibitively expensive for employers." *Id.* at 63, 71. To the contrary, the E.O. and this rule merely identify types of costs that are not allowed for reimbursement under the well-established Federal procurement scheme, which already contains mechanisms for submission to and review of contract costs by Federal agencies designed to avoid unnecessary Government expenditures. No additional enforcement burden or employer liability is established by the E.O. or this rule. As a result, this rule is consistent with the Court's holding in *Brown*, and does not run afoul of the NLRA.

C. Unclear Language

Comment: Several respondents stated that the proposed rule contained confusing or conflicting language or that the rule was unclear as to what costs are disallowed.

Response: The language added to the labor relations cost principle does not conflict with the existing language. As explained in section II.A. of this preamble, the existing language, now identified as FAR 31.205-21(a), identifies when costs are allowable. The language addressing the E.O., added at a new FAR paragraph 31.205-21(b), addresses costs incurred through persuader activities, which are unallowable.

D. Imposes Significant Compliance Burdens

Comment: A number of respondents contended that the rule imposes significant compliance burdens and accounting costs, including those incurred in distinguishing between allowable and unallowable costs.

Response: FAR 31.201-6 requires contractors to have an accounting system to segregate unallowable costs. The incremental costs of implementing and tracking an additional unallowable cost element will be minimal. No changes in the rule have been made in response to this comment.

E. Conflicts With 29 U.S.C. 433

Comment: One respondent believed that the proposed rule was in conflict with 29 U.S.C. 433, which requires that employers file reports with the Secretary of Labor if they engage in certain "persuader activities" defined in

that section. The respondent stated that section 433 defines these activities differently and more narrowly than E.O. 13494.

Response: The policies codified in the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 401 *et seq.*, and the E.O. are not in conflict. Nothing in the E.O. or the rule affects the scope of employer reporting obligations for purposes of section 203 of the LMRDA, 29 U.S.C. 433. As discussed above, the E.O. is designed to promote the policies of economy and efficiency in Federal Government contracting established in the Federal Property and Administrative Services Act, by excluding certain costs that are not directly related to the contractor's provision of goods and services to the Government, and to do so in a neutral manner that is consistent with that reflected in 29 U.S.C. 433.

F. Unreimbursable Costs

Comment: A respondent stated that unreimbursable costs, as addressed in the proposed rule, are too broad and ignore the realities that employers frequently reimburse employees for time spent in collective bargaining and further ignore the rise and prevalence of neutrality pacts between employers and unions, used by the parties to minimize labor disputes. The respondent further stated that employers and unions frequently cooperate to encourage employees to ratify a collective bargaining agreement reached by the employer and the employees' bargaining representative. The respondent suggested that the list of reimbursable expenses in FAR 31.205–21(a) be amended by adding immediately after the words "employee publications" the following: "the costs of preparing for and conducting collective bargaining and the cost attributable to the ratification of collective bargaining agreements."

Response: Inclusion of this suggested language in the rule is unnecessary. Under the final rule, the costs of collective bargaining that are not persuader activity under FAR 31.205–21(b) are covered by FAR 31.205–21(a), and would be allowable to the extent that the costs were reasonable, allocable, and not unallowable under another cost principle, and are otherwise lawful. (See response to comment in section II.A.) Neutrality agreements would be handled in similar fashion. These agreements are entered into by contractors and labor organizations and have often been used to establish mutually agreed-to restraints for reducing disputes associated with union representation. Therefore, costs

associated with the development, negotiation, and enforcement of neutrality agreements would not normally be expected to involve any persuader activity. So long as that is the case, under the rule, costs associated with agreements of this kind would generally be allowable as part of the maintenance of satisfactory labor relations, provided that they do not represent persuader activity under FAR 31.205–21(b), are reasonable, allocable, not unallowable under another cost principle, and are otherwise lawful.

G. Contractors' Indirect Litigation Costs

Comment: A respondent stated that it is important to clarify that this rule applies to a contractor's indirect litigation costs which are directly associated with the activities described in FAR 31.205–21(b) and suggested that this clarification could be accomplished by adding a fifth example of unallowable costs to the four listed in the proposed rule, which states "Costs of litigation or other legal proceedings arising on account of any activities described in paragraph (b) where it is determined by National Labor Relations Board, the National Mediation Board, a similar State or local administrative agency or a court of law that such activities were in violation of law or undertaken to persuade employees regarding their exercise of collective bargaining rights."

Response: This suggested clarification is not necessary since FAR 31.201–6 already disallows costs that are directly associated with unallowable costs, including associated litigation costs under FAR 31.205–47.

H. Additional Examples

Comment: A respondent suggested that two additional examples of unallowable costs be added to the list of examples contained in the proposed rule. The first example would state that the costs of surveillance by video, email, or other means of employee organizing activities are unallowable costs. The second example would state that "informal polling of employees as to their preferences for or against unionization is unlawful under the NLRA as a means of dissuading employees with respect to union activities, see, e.g., *Smithfield Foods*, 347 N.L.R.B. 1225 (2006), and therefore, time spent by supervisors and others conducting informal polls during the pendency of a union organizing campaign is unrelated to contract performance and should be listed as an example of unallowable costs under the Executive Order."

Response: Inclusion of these examples is not necessary. The examples in the rule are not exhaustive, but adequately cover the allowability of costs for a full range of lawful activities. Furthermore, the costs of activities that are unlawful, including unlawful activities under the NLRA, are not allowed under the FAR. FAR 31.201–3(b)(2) makes clear that costs incurred for unlawful activities shall not be reimbursed.

I. Contract Administration Activities

Comment: A respondent suggested that various contract administration activities be addressed in this rule, including that the contractors be required to update their accounting systems to account for the costs made unallowable by this rule; that contractors demonstrate to contracting officers that their accounting systems can effectively account for these unallowable costs; that contracting officers, upon issuance of the final rule, undertake supplemental reviews of the adequacy of the contractors' accounting systems to account properly for unallowable union persuasion costs; that contracting officers undertake an additional review of cost reimbursement claims to ensure that this new rule is being followed and the Government is not overcharged; that contractors certify on each bill or claim whether they have undertaken any activities to persuade employees concerning the manner of exercising their right to organize or bargain collectively and whether those costs have been accounted for and excluded from the reimbursement sought from the Federal Government; and that contracting officer's representatives include in their regular reports whether they know of any union persuasion activities the contractors may have undertaken during the reporting period.

Response: The FAR already contains coverage addressing the negotiation and administration of contracts that would cover these types of activities.

J. Role of Inspector General

Comment: A respondent stated that each agency should designate a member of the agency Inspector General's staff to collect information related to potentially unallowable union persuasion activities from employees or members of the public, some of whom may wish to remain anonymous, and refer that information to the contracting officer to facilitate billing reviews and audits as well as require that the Inspector General from each agency perform a review of the implementation of this rule within one year after the final rule goes into effect.

Response: This recommendation is outside the scope of this case, which was limited to the implementation of E.O. 13494 in the FAR. The FAR does not prescribe activities for Inspectors General.

K. Investigation of Reports of Employer Persuader Activities

Comment: A respondent stated that the final rule should make clear that contracting officers are to receive and investigate instances of employer persuader activities reported by workers or labor union representatives and that FAR 3.903 protects the right of the contractor's employees to report such activities. The respondent believed that the final rule should establish a process by which employees of Federal contractors or others with knowledge of employer persuasion costs can disclose that information to designated officials anonymously. Finally, the respondent believed that the final rule should state that FAR 33.209 applies to any Federal contractor who submits for reimbursement any costs made unallowable by this rule.

Response: These recommendations are outside the scope of this case, which was limited to the implementation of E.O. 13494. To the extent that FAR 3.903 and 33.209 are applicable, there is already adequate FAR coverage. Further, FAR subpart 3.10 also addresses contractor business ethics.

L. Regulatory Flexibility Act

Comment: Two respondents stated that the rule fails to comply with the Regulatory Flexibility Act. Both requested the basis for the stated conclusions and one requested the Councils to conduct an Initial Regulatory Flexibility Analysis.

Response: DoD, GSA, and NASA have certified that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act certification is based upon an analysis of the data in the Federal Procurement Data System (FPDS). (See additional discussion in section IV, Regulatory Flexibility Act.) That certification states that most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and thus do not require application of the cost principle contained in this rule. This is supported by the most recent data available from the FPDS. For Fiscal Year 2010, a search of FPDS revealed 1,822,515 awards to small businesses. Of these, 1,814,282 were fixed price (99.5 percent), and 1,220,154 (67

percent) were below the simplified acquisition threshold.

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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principles contained in this rule.

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 Part 31

Government procurement.

Dated: October 21, 2011.

Laura Auletta,

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Revise section 31.205–21 to read as follows:

31.205–21 Labor relations costs.

(a) Costs incurred in maintaining satisfactory relations between the contractor and its employees (other than those made unallowable in paragraph (b) of this section), including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

(b) As required by Executive Order 13494, Economy in Government Contracting, costs of any activities undertaken to persuade employees, of any entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing are unallowable. Examples of unallowable costs under this paragraph include, but are not limited to, the costs of—

(1) Preparing and distributing materials;

(2) Hiring or consulting legal counsel or consultants;

(3) Meetings (including paying the salaries of the attendees at meetings held for this purpose); and

(4) Planning or conducting activities by managers, supervisors, or union representatives during work hours.

[FR Doc. 2011–27790 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, 4, and 8

[FAC 2005–54; Item X; Docket 2011–0078; Sequence 3]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

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

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1275 First Street, NE., 7th Floor, Washington, DC 20417, (202) 501–4755, for information

pertaining to status or publication schedules. Please cite FAC 2005–54, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 1, 4, and 8, this document makes editorial changes to the FAR.

List of Subjects in 48 CFR Parts 1, 4, and 8

Government procurement.

Dated: October 21, 2011.

Laura Auletta,

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1 and 8 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, and 8 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory text, by adding FAR segments “52.215–22” and “52.215–23” and their corresponding OMB Control Number “9000–0173”.

PART 4—ADMINISTRATIVE MATTERS

4.604 [Amended]

■ 3. Amend section 4.604 in paragraph (c) by removing “guidance, by January 5,” and adding “guidance, within 120 days after the end of each fiscal year,” in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.501 [Amended]

■ 4. Amend section 8.501 by removing “http://www.nm.blm.gov/www/amfo/amfo_home.html” and adding “<http://blm.gov/8pjd>” in its place.

[FR Doc. 2011–27791 Filed 11–1–11; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0077; Sequence 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–54; Small Entity Compliance Guide

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

and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–54, which amend the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2005–54, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: For effective dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–54 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–54

Item	Subject	FAR case	Analyst
I	Notification of Employee Rights Under the National Labor Relations Act	2010–006	McFadden.
II	Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions	2008–025	Robinson.
III	Small Disadvantaged Business Program Self-Certification	2009–019	Morgan.
IV	Certification Requirement and Procurement Prohibition Relating to Iran Sanctions	2010–012	Davis.
V	Representation Regarding Export of Sensitive Technology to Iran (Interim)	2010–018	Davis.
VI	Set-Asides for Small Business (Interim)	2011–024	Morgan.
VII	Sudan Waiver Process	2009–041	Davis.
VIII	Successor Entities to the Netherlands Antilles	2011–014	Davis.
IX	Labor Relations Costs	2009–006	Chambers.
X	Technical Amendments.		

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 numbers and subject set forth in the documents following these item summaries. FAC 2005–54 amends the FAR as specified below:

Item I—Notification of Employee Rights Under the National Labor Relations Act (FAR Case 2010–006)

This rule adopts as final, without change, the interim rule that published

in the **Federal Register** at 75 FR 77723 on December 13, 2010, implementing Executive Order (E.O.) 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the Department of Labor (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.

Item II—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions (FAR Case 2008–025)

This final rule amends the FAR to address personal conflicts of interest by employees of Government contractors, as required by section 841(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) (now codified at 41 U.S.C. 2303). This rule requires the contractor to take the steps necessary to identify and prevent personal conflicts

of interest for employees that perform acquisition functions closely associated with inherently governmental functions. The contracting officer shall consult with agency legal counsel for advice and recommendations on a course of action when the contractor reports a personal conflict of interest violation by a covered employee or when the contractor violates the clause requirements.

Item III—Small Disadvantaged Business Program Self-Certification (FAR Case 2009–019)

This rule adopts as final, without change, an interim rule that implements revisions made by the Small Business Administration (SBA) in its Small Disadvantaged Business (SDB) regulations. The FAR interim rule was published in the **Federal Register** at 75 FR 77737 on December 13, 2010, to allow SDBs to self-represent their SDB status to prime contractors in good faith when seeking Federal subcontracting opportunities. This FAR revision removed an administrative burden for SDB subcontractors to obtain SBA certification, as well as prime contractors, who were required to confirm that SDB subcontractors had obtained SBA certification.

Item IV—Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (FAR Case 2010–012)

This rule adopts as final, with minor changes, an interim rule. The interim rule implemented sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 102 requires certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996. Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. This rule will have little effect on domestic small business concerns, because such dealings with Iran are already generally prohibited under U.S. law.

Item V—Representation Regarding Export of Sensitive Technology to Iran (FAR Case 2010–018) (Interim)

This interim rule amends the FAR to include additional requirements to implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. 111–195. To enhance 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 Public Law 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.

[FR Doc. 2011–27794 Filed 11–1–11; 8:45 am]

BILLING CODE 6820–EP–P