

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2012–0080, Sequence 3]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–58; Introduction**

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

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–58. 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 2005–58 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 2005–58**

Item	Subject	FAR case	Analyst
I .....	Biobased Procurements .....	2010–004	Clark.
II .....	Representation Regarding Export of Sensitive Technology to Iran .....	2010–018	Davis.
III .....	Justification and Approval of Sole-Source 8(a) Contracts .....	2009–038	Morgan.
IV .....	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 2005–58 amends the FAR as specified below:

**Item I—Biobased Procurements (FAR Case 2010–004)**

This final rule amends the FAR to implement changes that require contractors to report the biobased products purchased under service and construction contracts. The Farm Security and Rural Investment Act (7 U.S.C. 8102) requires agencies to report this information to the Office of Federal Procurement Policy. This reporting will enable agencies to monitor compliance with the Federal preference for purchasing biobased products. Contractors may need to create an inventory management system to track the biobased products purchased for each contract. However, this rule may enhance small business biobased product suppliers’ participation in this market.

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

This final rule adopts, with minor changes, an interim rule which added 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. This rule has no significant impact on small business concerns.

**Item III—Justification and Approval of Sole-Source 8(a) Contracts (FAR Case 2009–038)**

This rule adopts as final, without change, an interim rule published in the *Federal Register* at 76 FR 14559 on March 16, 2011, which implemented section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). Section 811 prohibits the award of a sole-source contract in an amount over \$20 million under the 8(a) program authority (15 U.S.C. 637(a)) without first obtaining a written Justification and Approval (J&A) approved by an appropriate official, and making public the J&A and related information. This internal Government requirement for the development and approval of a sole-source J&A for 8(a) sole-source awards over \$20 million neither prohibits such awards nor increases the qualifications required of 8(a) firms.

**Item IV—Technical Amendments**

Editorial changes are made at FAR 1.201–1, 52.212–5, and 52.219–28.

Dated: April 11, 2012.

Laura Auletta,

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

Federal Acquisition Circular (FAC) 2005–58 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 2005–58 is effective April 18, 2012, except for Items I and II which are effective May 18, 2012.

Dated: April 10, 2012.

**Richard Ginman,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: April 5, 2012.

**Joseph A. Neurauter,**

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

Dated: April 11, 2012.

**William P. McNally,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 2012–9200 Filed 4–17–12; 8:45 a.m.]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 1, 2, 11, 23, and 52**[FAC 2005–58; FAR Case 2010–004;  
Item I; Docket 2010–0004, Sequence 2]

RIN 9000–AM03

**Federal Acquisition Regulation;  
Biobased Procurements****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 changes due to the Farm  
Security and Rural Investment Act that  
require contractors to report the  
biobased products purchased under  
service and construction contracts. This  
reporting will enable agencies to  
monitor compliance with the Federal  
preference for purchasing biobased  
products.**DATES:** *Effective Date:* May 18, 2012.**FOR FURTHER INFORMATION CONTACT:** Mr.  
William Clark, Procurement Analyst, at  
202–219–1813, for clarification of  
content. For information pertaining to  
status or publication schedules, contact  
the Regulatory Secretariat at 202–501–  
4755. Please cite FAC 2005–58, FAR  
Case 2010–004.**SUPPLEMENTARY INFORMATION:****I. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 41179 on July 13, 2011, to implement section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). These statutory provisions are codified at 7 U.S.C. 8102. This section of the United States Code requires Federal agencies to establish a procurement program, develop procurement specifications, procure biobased products, and give preference to those items that are composed of the highest percentage of biobased products practicable or those products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1). Title 7 U.S.C. 8102 provides Federal agencies the flexibility not to procure biobased

products if the product cannot be acquired—

(a) Within a reasonable time frame providing for compliance with the contract performance schedule;

(b) Meeting reasonable performance requirements; or

(c) At a reasonable price.

The Biobased Products Preference Program was originally implemented in FAR Case 2004–032, which was published in the **Federal Register** at 72 FR 63040, November 7, 2007. This final rule implements additional elements of 7 U.S.C. 8102 as amended by Public Law 110–246. This final rule also meets the direction in the Presidential Memorandum, “Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement,” dated February 21, 2012, to amend the FAR to require reporting of biobased product purchases. Two respondents submitted 14 public comments on the proposed rule.

**II. Discussion and Analysis**

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. Summary of Changes to the FAR**

1. The definition of “biobased product” is revised at FAR 2.101.
2. A prohibition against agencies collecting more data than typically would be provided by other entities (other than data confirming the biobased content) was added to FAR 11.302.
3. The clause at FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, is amended to require annual reporting by the contractor of the types and dollar value of any U.S. Department of Agriculture (USDA)-designated biobased products purchased during the preceding fiscal year on the contract.
4. References to the USDA’s BioPreferred Program are updated to conform to the agency’s relocation of the program’s rules in the Code of Federal Regulations (see 76 FR 53631 dated August 29, 2011).
5. USDA established a blanket exemption for all USDA-designated biobased items from the Biopreferred Program’s requirements for procurements involving combat or combat-related missions and for spacecraft systems and launch support equipment (see 73 FR 27953 dated May

14, 2008). FAR 23.404(b)(2) and 52.223–2(a)(2) are updated to conform to the blanket exemption.

**B. Positive Comments**

*Comments:* Both respondents stated their strong support for the proposed rule. One respondent viewed it “as a necessary action to implement existing laws and policies for purchasing biobased products by federal agencies and contractors.”

*Response:* Noted.

*Comments:* One respondent expressed particular support for the provision in the proposed rule directing contracting officers to refer to the USDA list of designated biobased items. Both respondents agreed that the USDA list is an important and growing reminder of the availability of biobased products.

*Response:* Noted. However, the preference for use of biobased products that are USDA-designated items existed at FAR 52.223–2(a) prior to the proposed rule.

*Comments:* Both respondents expressed support for the requirement that contractors report annually on the biobased products purchased and their dollar value. One respondent stated that such annual reports, by contractors and agencies, will help measure the growth and success of the program and ensure agency and contractor compliance with the law.

*Response:* Noted. Also see section C below regarding reporting and section V for a comment on the reporting burden associated with this rule.

**C. Definitions**

*Comment:* One respondent noted that neither “cognizant environmental manager” nor “agency environmental manager” was defined in the proposed rule. The respondent suggested that more clarity was needed, and the “person to whom the product type and dollar value data are reported should be someone who can ensure that the data are properly collected and tabulated and made available for reporting into the Federal Procurement Data System or other system that will allow each agency to report the information to the Office of Federal Procurement Policy, as required.”

*Response:* The clause at FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, has been revised at paragraphs (c) and (d) to eliminate any reference to the environmental manager and change the reporting requirement to the environmental point of contact, with a copy of the report to be sent to the contracting officer. Together, these

revisions eliminate any need for additional definitions in the FAR coverage.

#### D. Allow No Exceptions or Waivers

*Comment:* Strongly supporting the program's requirement that all Federal agencies and contractors purchase USDA-designated biobased products, one respondent recommended that no exemptions or waivers should be allowed under any circumstances.

*Response:* Exemptions or waivers, under certain circumstances, to the acquisition of USDA-designated biobased products are recognized by the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 8102, and Executive Order 13514, entitled "Federal Leadership in Environmental, Energy, and Economic Performance," dated October 5, 2009. These exemptions or exceptions previously have been implemented in the FAR.

#### E. Out-of-Scope Comments

*Comments:* One respondent presented recommendations for the elements on which the Office of Management and Budget (OMB) should report annually in order to ensure compliance. These recommendations included mandatory reporting elements for each agency, department, and its contractors. The respondent asserted that there should be additional reporting required by DoD. The second respondent noted that section 9002(a)(4)(B) of the statute provides specific annual reporting requirements for the GSA and Defense Logistics Agency and queried why those agency reporting requirements were not addressed in the proposed rule.

*Response:* The FAR addresses requirements for contractors. OMB is responsible for determining agency reporting requirements. Therefore, these comments are outside the scope of this rule.

*Comment:* One respondent recommended that, in order to ensure full compliance, DoD should seek to update 100 percent of its specifications to include biobased products by December 31, 2013.

*Response:* The internal review of specifications by a particular agency is outside the scope of this rule.

*Comment:* One respondent recommended that a complete inventory management system needed to be created to track the biobased products purchased by all Federal agencies. The respondent stated that "(t)his scorecard should contain information on agencies and departments purchasing biobased products and contracts." According to the respondent, codifying the biobased products acquisition reporting structure

in the FAR would lead to more market pull.

*Response:* The FAR addresses requirements for contractors. OMB is responsible for determining agency management and reporting requirements. Therefore, this recommendation is outside the scope of this 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 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, General Services Administration, and National Aeronautics and Space Administration have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 9002 of the Farm Security and Rural Investment Act of 2002, codified at 7 U.S.C. 8102, as amended by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246).

Title 7 U.S.C. 8102 requires Federal agencies to establish a procurement program, develop procurement specifications, procure biobased products, and give preference to those items that are composed of the highest percentage of biobased products practicable or products that comply with the regulations issued under section 103 of Public Law 100-556 (42 U.S.C. 6914b-1).

This final rule modifies FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, to require prime contractors to report the product types and dollar value of any USDA-designated biobased products purchased during the preceding fiscal year. The information reported by prime contractors will enable Federal agencies to (a) report annually to the Office of Federal Procurement Policy (OFPP) information concerning actions taken to implement the preference for biobased products and (b) assess compliance and measure progress in

carrying out the preference for biobased products. Further, OFPP must collect the information reported by the agencies and make it publicly available on an annual basis.

There were no public comments filed in response to the Initial Regulatory Flexibility Analysis.

The rule promotes the use of biobased products and requires an annual report on the product types and dollar value of any U.S. Department of Agriculture (USDA)-designated biobased products purchased by the prime contractor during the previous year. By averaging data from Fiscal Years 2009 and 2010 in the Federal Procurement Data System (FPDS), we estimate that 48,376 contractors will be affected. Of those entities, approximately 35,927 (70 percent) will be small businesses. This estimate is based on contract actions from the following selected Product Services Codes (PSCs):

- A—Research and Development;
- F—Natural Resources Management;
- J—Maintenance, Repair, and Rebuilding of Equipment;
- M—Operation of Government-Owned Facility;
- S—Utilities and Housekeeping Services;
- T—Photographic, Mapping, Printing, and Publication Services;
- Y—Construction of Structures and Facilities; and
- Z—Maintenance, Repair or Alteration of Real Property.

We believe the clause will apply to most of the contract actions in the selected PSCs. Based on the Fiscal Year 2009 FPDS data collected, there were 55,174 unique Data Universal Numbering System (DUNS) numbers performing such contracts, and 40,741 of these were small businesses. Based on the Fiscal Year 2010 FPDS data collected, there were 41,578 unique DUNS numbers, and 31,113 of these were small businesses.

Where information on the biobased nature of products is not already available, contractors may need to create an inventory management system to track the product types and dollar value of USDA-designated biobased products purchased for each contract. However, DoD, GSA, and NASA expect that the impact will be minimal because the existing clause already requires contractors to make maximum use of biobased products in the performance of services and construction contracts, and the change does not impose any substantial new requirements other than the prime contractor reports. Small businesses are active suppliers of biobased products, and this rule may serve to enhance their participation in this market.

The types of skills required to prepare the report include data gathering, research, quantitative, editing, and drafting. We estimate the personnel required would be equivalent to a Government employee at a GS-11, step 5 salary.

There are no other reporting, recordkeeping, or other compliance requirements associated with this rule. There is no impact, positive or negative, on small businesses. Thus, there are no professional skills necessary on the part of small businesses. There are no direct costs to small business firms to comply with this rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD,

GSA, and NASA were not able to identify any significant alternatives that would accomplish the objectives of the statute. Further, the impact of this rule on small entities is expected to be generally positive.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

## V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000-0180, titled "Biobased Procurements."

One comment was received on the paperwork burden associated with this rule. It is summarized below.

*Comment:* The respondent believed that the required reporting does not have to be burdensome, because the clause at FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, already provides that the contractor shall make maximum use of USDA-designated biobased products (with certain exceptions). The respondent noted that, in order to comply with this current requirement, contractors should already be keeping records. Adding the dollar value of those items and reporting annually should not add a significant burden, according to the respondent. The respondent suggested that agencies should further simplify the reporting burden by making available an electronic template for the required report.

*Response:* The FAR does not designate practices to be used internally by Government agencies. Although providing an electronic reporting template for use by contractors seems to be a good idea, the FAR is not the proper vehicle for its designation.

## List of Subjects in 48 CFR Parts 1, 2, 11, 23, and 52

Government procurement.

Dated: April 11, 2012.

**Laura Auletta,**

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 11, 23, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 11, 23, 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 REGULATION SYSTEM

### 1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text, by adding in sequence, FAR segment "52.223-2" and its corresponding OMB Control Number "9000-0180".

## PART 2—DEFINITIONS OF WORDS AND TERMS

### 2.101 [Amended]

■ 3. Amend section 2.101 in paragraph (b)(2), in the definition "Biobased product" by removing "(including plant, animal, and marine materials) or" and adding "and" in its place.

## PART 11—DESCRIBING AGENCY NEEDS

■ 4. Amend section 11.302 by revising paragraph (c)(2) to read as follows:

### 11.302 Policy.

\* \* \* \* \*

(c) \* \* \*

(2) For biobased products, agencies may not require, as a condition of purchase of such products, the vendor or manufacturer to provide more data than would typically be provided by other business entities offering products for sale to the agency, other than data confirming the biobased content of a product (see 7 CFR 3201.8).

## PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

### 23.401 [Amended]

■ 5. Amend section 23.401 by removing from paragraph (b)(1) "part 2902" and adding "part 3201" in its place.

■ 6. Amend section 23.404 by revising the introductory text of paragraph (b)(2); and removing from paragraph (e)(1) "(including plant, animal, and marine materials)". The revised text reads as follows:

### 23.404 Agency affirmative procurement programs.

\* \* \* \* \*

(b) \* \* \*

(2) EPA and USDA may provide categorical exemptions for items that they designate, when procured for a specific purpose. For example, all USDA-designated items (see 7 CFR 3201.3(e)) are exempt from the preferred

procurement requirement for the following:

\* \* \* \* \*

■ 7. Amend section 23.405 by removing from paragraph (a)(2) "<http://www.usda.gov/biopreferred>" and adding "<http://www.biopreferred.gov>" in its place; and adding paragraph (a)(3) to read as follows:

### 23.405 Procedures.

(a) \* \* \*

(3) When acquiring recovered material or biobased products, the contracting officer may request information or data on such products, including recycled or biobased content or related standards of the products (see 11.302(c)).

\* \* \* \* \*

### 23.406 [Amended]

■ 8. Amend section 23.406 by removing from paragraph (b) "contracts unless" and adding "contracts, unless" in its place; and removing "<http://www.usda.gov/biopreferred> or 7 CFR Part 2902" and adding "<http://www.biopreferred.gov> or 7 CFR part 3201" in its place.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 52.223-1 [Amended]

■ 9. Amend section 52.223-1 by removing "(Dec 2007)" and adding "(May 2012)" in its place; and removing "part 2902" and adding "part 3201" in its place.

■ 10. Amend section 52.223-2 by:

■ a. Revising the date of the clause;

■ b. Revising paragraph (a)(2) introductory text; and

■ c. Adding paragraphs (c) and (d).

The revised and added text reads as follows:

### 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

\* \* \* \* \*

### Affirmative Procurement of Biobased Products Under Service and Construction Contracts (May 2012)

\* \* \* \* \*

(a) \* \* \*

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

\* \* \* \* \*

(c) In the performance of this contract, the Contractor shall—

(1) Report to the environmental point of contact identified in paragraph (d) of this clause, with a copy to the Contracting

Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30;

(2) Submit this report no later than—  
(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance; and  
(3) Contact the environmental point of contract to obtain the preferred submittal format, if that format is not specified in this contract.

(d) The environmental point of contact for this contract is: \_\_\_\_\_ [Contracting Officer shall insert full name, phone number, and email address. In addition, the Contracting Officer may include the agency Web site for reporting.]

\* \* \* \* \*

[FR Doc. 2012-9201 Filed 4-17-12; 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 2005-58; FAR Case 2010-018; Item II; 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:** Final rule.

**SUMMARY:** DoD, GSA, and NASA have adopted as final, with changes, the 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:* May 18, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia 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 2005-58, FAR Case 2010-018.

**SUPPLEMENTARY INFORMATION:**

## I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 68028 on November 2, 2011, 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. One respondent submitted comments on the interim rule.

## II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comment in the development of the final rule. There were no significant changes in the final rule as a result of the one public comment.

*Comment:* The respondent pointed out that the introductory text at FAR 25.703-1, Definitions, should refer to definitions used in the “section” rather than “subpart.”

*Response:* The correction has been made.

## 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 regulatory 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 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).

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.”

## V. Paperwork Reduction Act

The 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: April 11, 2012.

**Laura Auletta,**

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

### Interim Rule Adopted as Final With Changes

■ Accordingly, the interim rule amending 48 CFR parts 4, 25, and 52, which was published in the **Federal Register** at 76 FR 68028, November 2, 2011, is adopted as final with the following changes:

### 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 25.703-1 by revising the introductory text to read as follows:

#### 25.703-1 Definitions.

As used in this section—

\* \* \* \* \*

[FR Doc. 2012-9202 Filed 4-17-12; 8:45 am]

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 6, 15, and 19**

[FAC 2005–58; FAR Case 2009–038; Item III; Docket 2010–0095, Sequence 1]

RIN 9000–AL55

**Federal Acquisition Regulation;  
Justification and Approval of Sole-  
Source 8(a) Contracts**

**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 adopting as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2010. This section requires the head of an agency to execute and make public prior to award, the justification for an 8(a) sole-source contract in an amount exceeding \$20 million.

**DATES:** *Effective Date:* April 18, 2012.

**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 2005–58, FAR Case 2009–038.

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 14559 on March 16, 2011, to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY 2010) (Pub. L. 111–84). Section 811 prohibits the award of a sole-source contract in an amount over \$20 million under the 8(a) Business Development Program authority (15 U.S.C. 637(a)) without first obtaining a written Justification and Approval (J&A) approved by an appropriate official and making public the J&A and related information. Section 811 does not institute any requirement for J&As for sole-source 8(a) contracts less than or equal to \$20 million. Nine respondents submitted comments on the interim rule.

**II. Discussion and Analysis**

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 is provided as follows:

**A. Summary of Significant Changes**

There were no changes made to the FAR as a result of the public comments received.

**B. Analysis of Public Comments****1. General Support for the Rule as Written**

*Comment:* A majority of the respondents were supportive of the rule as written and recommended there be no substantial changes to the interim rule.

*Response:* The Councils acknowledge receipt of these comments in support of the rule.

**2. Statutory Basis for the Rule**

*Comment:* A number of respondents commented that there is no statutory basis for the new language at FAR 19.808–1(a), which states that the Small Business Administration (SBA) may not accept a sole-source 8(a) contract in excess of \$20 million for negotiation, unless the requesting agency has completed a J&A in accordance with FAR 6.303. The respondents recommended amending this language in the final rule to clarify that the J&A is only required to be developed and executed prior to award and after coordinating and negotiating with the SBA (or the 8(a) participant where SBA has delegated its authority to the procuring agency).

*Response:* The law stipulates that the head of the agency may not award a sole-source contract that exceeds \$20 million under the 8(a) program unless the contracting officer justifies the use of a sole-source contract in writing and the justification is approved by the appropriate official. However, the law does not specify the precise stage in the contract award process when the J&A must be executed. The language that was added to FAR 19.808–1 ensures that the J&A is executed prior to contract negotiation, a critical juncture in the contract award continuum. Contract negotiation, with rare exception, occurs before the contract is awarded; therefore there is no conflict with the law.

Execution of the J&A prior to the SBA's initiation of contract negotiations adheres to the established procedures in the FAR that require (1) at FAR 6.303–1, the contracting officer to justify the

use of a sole-source contract in writing prior to negotiations; and (2) at FAR 19.804–2, the agency, if appropriate, to request in its offering letter to the SBA, that a requirement with a contract value over the applicable competitive threshold be awarded as a sole-source contract under the 8(a) program. The language that was added at FAR 19.808–1 does not pre-empt the obligation of agencies to cooperate with the SBA in determining the extent to which a requirement should be offered in support of the 8(a) program, nor does it impact SBA's acceptance of the requirement into the 8(a) program. It does not affect the timing of SBA's eligibility determination.

**3. Including the Value of Options in Contract Value**

*Comment:* Several respondents recommended that the \$20 million threshold be applicable to the base year only, rather than including options in the total contract value.

*Response:* The standard contract action valuation practice is outlined in FAR 1.108(c), which provides that the final anticipated dollar value of an action include the dollar value of all options. Section 811 does not provide a basis to diverge from this standard.

**4. Cross Reference at FAR 6.204(b)**

*Comment:* One respondent recommended striking the parenthetical text at FAR 6.204(b), which references the requirements for a separate justification to support the use of 8(a) sole-source awards in FAR subpart 6.3, because it was unnecessary and potentially confusing.

*Response:* The Councils considered the comment, but find that the cross reference adds clarity to the FAR text.

**5. Content of Justification**

*Comment:* A number of respondents recommended that the language at FAR 6.303–2(d)(5) be amended in the final rule to clarify the other matters the head of the agency should consider when justifying and approving the award of a sole-source 8(a) contract in excess of \$20 million. These considerations should include Native American economic development and meeting agency small business goals.

*Response:* FAR 6.303–2(d)(5), as currently written, requires agency heads to address “Such other matters as the head of the agency concerned shall specify for purposes of this section.” This gives agency heads the discretion to consider Native American economic development and meeting agency small business goals, as well as other relevant

matters when justifying and approving the award of a sole-source 8(a) contract.

#### 6. Potential Impact on Native American-Owned Firms

*Comment:* Several respondents expressed concern regarding the possible impact facing Native American-owned enterprises. The respondents pointed out that the 8(a) program has undergone considerable reform over the last two years and has experienced overwhelming success in achieving its goals. The respondents also emphasized that the vast majority of Native American-owned enterprises have consistently provided high value support to their Government customers. In view of these considerations, the respondents requested that each executive agency send a policy directive to their contracting officers to outline the benefits of the SBA 8(a) program and the positive impact this program has had for Native participants.

*Response:* The benefits of SBA's 8(a) program and the positive impact this program has had for Native participants are promoted by SBA and the Office of Small and Disadvantaged Business Utilization (OSDBU) on a consistent basis throughout the Government. Each Federal agency with contracting authority has established an OSDBU. The OSDBU advocates for small, small disadvantaged (including the 8(a) program), veteran, service-disabled veteran-owned, HUBZone, and women-owned businesses. The OSDBU is charged with promoting increased access for small businesses to procurement opportunities, conducting outreach efforts, and providing liaison support for small and disadvantaged businesses. In addition, the OSDBU works closely with program officers and contracting officers to assist in the accomplishment of the annual Governmentwide 5 percent procurement goals for small disadvantaged businesses.

### 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 does not impose any additional requirements on the majority of small businesses. The rule implements the statutory requirements mandated by section 811, Justification and Approval of Sole-Source Contracts, of the National Defense Authorization Act for Fiscal Year 2010. It is recognized that a very small number of businesses that have been awarded 8(a) contracts over the \$20 million threshold may be impacted. However, the rule does not limit the number of contracts or dollars awarded to these businesses. The rule may also indirectly benefit the 8,833 currently certified section 8(a) firms by improving their likelihood of a contract award through increased competition, but this impact is similarly considered not significant.

### 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 6, 15, and 19

Government procurement.

Dated: April 11, 2012.

**Laura Auletta,**

*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 6, 15, and 19, which was published in the **Federal Register** at 76 FR 14559 on March 16, 2011, is adopted as a final rule without change.

[FR Doc. 2012-9204 Filed 4-17-12; 8:45 am]

**BILLING CODE 6820-EP-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1 and 52

[FAC 2005-58; Item IV; Docket 2012-0079; Sequence 2]

#### 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:* April 18, 2012.

**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 2005-58, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** In order to update certain elements in 48 CFR parts 1 and 52, this document makes editorial changes to the FAR.

#### List of Subjects in 48 CFR Parts 1 and 52

Government procurement.

Dated: April 11, 2012.

**Laura Auletta,**

*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 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1 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 REGULATIONS SYSTEM

■ 2. Amend section 1.201-1 by revising paragraph (c) to read as follows:

##### 1.201-1 The two councils.

\* \* \* \* \*

(c) The Director of the DAR Council shall be the representative of the Secretary of Defense. The operation of the DAR Council will be as prescribed by the Secretary of Defense.

Membership shall include representatives of the military departments, the Defense Logistics Agency, the Defense Contract Management Agency, and the National Aeronautics and Space Administration.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**52.212-5 [Amended]**

■ 2. Amend section 52.212-5 by removing from paragraph (b)(7) “(Jan 2012)” and adding “(Feb 2012)” in its place; and removing from paragraph (b)(23) “(Apr 2009)” and adding “(Apr 2012)” in its place.

■ 3. Amend section 52.219-28 by revising the date of the clause, and removing from paragraph (c) “<http://www.sba.gov/services/contractingopportunities/standardstopping/>” and adding “<http://www.sba.gov/content/table-small-business-size-standards>” in its place.

The revised text reads as follows:

**52.219-28 Post-Award Small Business Program Rerepresentation.**

\* \* \* \* \*

**Post-Award Small Business Program Rerepresentation (Apr 2012)**

\* \* \* \* \*

[FR Doc. 2012-9206 Filed 4-17-12; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2012-0081, Sequence 3]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005-58; 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 the rule appearing in Federal Acquisition Circular (FAC) 2005-58, which amends the Federal Acquisition Regulation (FAR). An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005-58, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

**DATES:** April 18, 2012.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005-58 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

**LIST OF RULES IN FAC 2005-58**

Item	Subject	FAR case	Analyst
I*	Biobased Procurements	2010-004	Clark.
II	Representation Regarding Export of Sensitive Technology to Iran	2010-018	Davis.
III	Justification and Approval of Sole-Source 8(a) Contracts	2009-038	Morgan.
IV	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 2005-58 amends the FAR as specified below:

**Item I—Biobased Procurements (FAR Case 2010-004)**

This final rule amends the FAR to implement changes that require contractors to report the biobased products purchased under service and construction contracts. The Farm Security and Rural Investment Act (7 U.S.C. 8102) requires agencies to report this information to the Office of Federal Procurement Policy. This reporting will enable agencies to monitor compliance with the Federal preference for purchasing biobased products. Contractors may need to create an inventory management system to track the biobased products purchased for each contract. However,

this rule may enhance small business biobased product suppliers’ participation in this market.

**Item II—Representation Regarding Export of Sensitive Technology to Iran (FAR Case 2010-018)**

This final rule adopts, with minor changes, an interim rule which added 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. This rule has no significant impact on small business concerns.

**Item III—Justification and Approval of Sole-Source 8(a) Contracts (FAR Case 2009-038)**

This rule adopts as final, without change, an interim rule published in the **Federal Register** at 76 FR 14559 on March 16, 2011, which implemented section 811 of the National Defense Authorization Act for Fiscal Year 2010

(Pub. L. 111-84). Section 811 prohibits the award of a sole-source contract in an amount over \$20 million under the 8(a) program authority (15 U.S.C. 637(a)) without first obtaining a written Justification and Approval (J&A) approved by an appropriate official, and making public the J&A and related information. This internal Government requirement for the development and approval of a sole-source J&A for 8(a) sole-source awards over \$20 million neither prohibits such awards nor increases the qualifications required of 8(a) firms.

**Item IV—Technical Amendments**

Editorial changes are made at FAR 1.201-1, 52.212-5, and 52.219-28.

Dated: April 11, 2012.

**Laura Auletta,**

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

[FR Doc. 2012-9215 Filed 4-17-12; 8:45 am]

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