

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.

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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