

PART 49—TERMINATION OF CONTRACTS

■ 11. The authority citation for 48 CFR part 49 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

49.402–8 [Amended]

■ 12. Amend section 49.402–8 by removing “42.1503(f)” and adding “42.1503(h)” in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAC 2005–69; FAR Case 2013–011; Item IV; Docket 2013–0011, Sequence 1]

RIN 9000–AM16

Federal Acquisition Regulation; Repeal of Sunset for Certain Protests of Task or Delivery Order 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 issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year 2013. This section removes the sunset date for protests against certain orders under a task-order contract or delivery-order contract for title 10 agencies only.

DATES: *Effective:* September 3, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–69, FAR Case 2013–011.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing this final rule to amend the FAR to implement section 830 of the 2013 NDAA (Pub. L. 112–239) enacted January 2, 2013, for agencies covered by title 10 of the United States Code, namely DoD, NASA, and Coast Guard.

This section removes the sunset date for protests against the issuance or proposed issuance of an order, valued at more than \$10 million, under a task-order contract or delivery-order contract for title 10 agencies only. The authority to protest the placement of such orders does not expire for DoD, NASA, and the Coast Guard. This rule does not affect title 41 agencies, which continue to have a sunset date of September 30, 2016.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because this rule reflects the statutory elimination of the sunset date for protest for title 10 agencies. The FAR revision informs the acquisition community of this change.

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 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.

IV. Regulatory Flexibility Act

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

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 Subject in 48 CFR Part 16

Government procurement.

Dated: July 26, 2013.

William Clark,

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as set forth below:

PART 16—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 16.505 by revising paragraph (a)(10)(ii) to read as follows:

16.505 Ordering.

(a) * * *

(10) * * *

(ii) The authority to protest the placement of an order under (a)(10)(i)(B) of this section expires on September 30, 2016, for agencies other than DoD, NASA, and the Coast Guard (41 U.S.C. 4103(d) and 41 U.S.C. 4106(f)). The authority to protest the placement of an order under (a)(10)(i)(B) of this section does not expire for DoD, NASA, and the Coast Guard.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–69; FAR Case 2013–009; Item V; Docket 2013–0009, Sequence 1]

RIN 9000–AM62

Federal Acquisition Regulation; Least Developed Countries That Are Designated Countries

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 implement a revision by the United States Trade Representative (USTR) to the list of least developed countries that are designated countries under the Trade Agreements Act of 1979.

DATES: *Effective:* September 3, 2013.

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 2005-69, FAR Case 2013-009.

SUPPLEMENTARY INFORMATION:

I. Background

19 U.S.C. 2511(b)(4) allows the President to designate least developed countries as eligible countries under the Trade Agreements Act of 1979, allowing non-discriminatory treatment of the products of such countries in acquisitions subject to the World Trade Organization Government Procurement Agreement. This statutory authority has been delegated to the USTR. The USTR selects the countries for such designation from the United Nations (UN) Least Developed Countries List. USTR consults with other government agencies on trade policy matters through the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). These changes are necessary to reflect the current UN Least Developed Countries List. Based on TPSC's approval on February 13, 2013, to incorporate the changes to the UN Least Developed Countries List, the USTR has revised the list of least developed countries that are designated as eligible countries as follows:

- Changed the name of East Timor to Timor-Leste, reflecting the change on the UN list.
- Removed the Maldives, which is no longer a least developed country.
- Added South Sudan, which seceded from Sudan to form an independent state on July 9, 2011, and was formally recognized as a least developed country by the UN in December 2012. Although the United States continues to impose sanctions against Sudan, South Sudan is not subject to sanctions.

This final rule revises the definitions of “designated country” and “least developed country” at various locations throughout the FAR (FAR 25.003, Definitions; FAR 52.225-5, Trade Agreements; FAR 52.225-11, Buy

American Act—Construction Materials under Trade Agreements; and FAR 52.225-23, Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements) and makes a conforming change to FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations,” 41 U.S.C. 1707, is the statute that applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only revises the list of least developed countries that the USTR has designated as eligible for non-discriminatory treatment under the Trade Agreements Act. The addition of South Sudan and removal of the Maldives will have no significant effect beyond the internal operating procedures of the Government or a significant cost or administrative impact on contractors or offerors, because the trade of all 49 least developed countries combined accounts for less than 1 percent of the global trade according to United Nations data. Individual least developed countries generate an average of less than .02 percent of the global trade. Since we are adding one least developed country and removing one, the net effect is negligible.

III. Executive Orders 12866 and 13563

Executive Orders 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.

IV. Regulatory Flexibility Act

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

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 25 and 52

Government procurement.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Government-wide 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 51 U.S.C. 20113.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

- 2. Amend section 25.003 by—
 - a. Removing from the definition “Designated country” in paragraph (3) “East Timor,” and “Maldives,” and adding, in alphabetical order, “South Sudan,” and “Timor-Leste,”; and
 - b. Removing from the definition “Least developed country” the words “East Timor,” and “Maldives,” and adding, in alphabetical order, “South Sudan,” and “Timor-Leste,”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 52.212-5 by revising the date of the clause and paragraph (b)(41) to read as follows:

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

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Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (SEP 2013)

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(b) * * *

(41) 52.225–5, Trade Agreements (Sep 2013) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

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- 4. Amend section 52.225–5 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (a) in the definition “Designated country” in paragraph (3) “East Timor,” and “Maldives,” and adding, in alphabetical order, “South Sudan,” and “Timor-Leste,”.

The revision reads as follows:

52.225–5 Trade Agreements.

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Trade Agreements (SEP 2013)

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- 5. Amend section 52.225–11 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (a) in the definition “Designated country” in paragraph (3) “East Timor,” and “Maldives,” and adding, in alphabetical order, “South Sudan,” and “Timor-Leste,”.

The revision reads as follows:

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

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Buy American Act—Construction Materials Under Trade Agreements (SEP 2013)

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- 6. Amend section 52.225–23 by—
- a. Revising the date of the clause;
- b. Removing from paragraph (a) in the definition “Designated country” in paragraph (3) “East Timor,” and “Maldives,” and adding, in alphabetical order, “South Sudan,” and “Timor-Leste,”; and
- c. Removing from paragraph (a) in the definition “Recovery Act designated country” in paragraph (3) “East Timor,” and “Maldives,” and adding, in alphabetical order, “South Sudan,” and “Timor-Leste,”.

The revision reads as follows:

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

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Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements. (SEP 2013)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005–69; FAR Case 2013–006; Item VI; Docket 2013–0006, Sequence 1]

RIN 9000–AM63

Federal Acquisition Regulation; Update to Biobased Reporting Requirements

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 revise the biobased reporting clause to require the contractor to submit the annual biobased report to a new Governmentwide Web site instead of the agency environmental point of contact.

DATE: *Effective:* September 3, 2013

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrussek, Procurement Analyst, at 202–501–0136, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–69, FAR Case 2013–006.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are revising the clause at FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, to reflect new reporting instructions for the annual biobased report; the reports will be submitted to a new Web site rather than to an agency point of contact.

For reporting in 2012, the Department of Agriculture provided a reporting site that was intended to be available for one year only. The Web site to be used for the annual Biobased reports due at the end of October 2013, <http://www.sam.gov>, is intended to be the

permanent site used for reporting this information. The new Web site is a Governmentwide site that allows contractors to submit a report on a contract-by-contract basis at any time throughout the year, improving consistency in reporting across Federal agencies with the goal of increasing Federal procurement of biobased products. The new Web site also generates a Governmentwide report for agency use. In addition, the new Web site includes instructions on how to complete the report and frequently asked questions.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because submission of the report was already required and changing the Web site to which the report is submitted will have no cost or other impact on contractors. These requirements affect only the internal operating procedures of the Government.

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 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.