

titled: Prohibition on Contracting with Inverted Domestic Corporations—Representation and Notification.

List of Subjects in 48 CFR Parts 1 and 52

Government procurement.

Dated: June 18, 2015.

William F. Clark,

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

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text, by adding in numerical sequence, “52.209–10” and its corresponding OMB Control Number “9000–0190”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.209–2 by revising the date of provision and paragraph (c) to read as follows:

52.209–2 Prohibition on Contracting With Inverted Domestic Corporations—Representation.

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Prohibition on Contracting with Inverted Domestic Corporations—Representation (Nov 2015)

* * * * *

(c) *Representation.* The Offeror represents that—

(1) It is, is not an inverted domestic corporation; and

(2) It is, is not a subsidiary of an inverted domestic corporation.

(End of provision)

■ 4. Amend section 52.209–10 by revising the date of the clause; and adding paragraph (d) to read as follows:

52.209–10 Prohibition on Contracting with Inverted Domestic Corporations.

* * * * *

Prohibition on Contracting With Inverted Domestic Corporations (Nov 2015)

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(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic

corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

(End of clause)

■ 5. Amend section 52.212–3 by revising the date of the provision and paragraph (n)(2) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

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Offeror Representations and Certifications—Commercial Items (Nov 2015)

* * * * *

(n) * * *
(2) *Representation.* The Offeror represents that—

(i) It is, is not an inverted domestic corporation; and

(ii) It is, is not a subsidiary of an inverted domestic corporation.

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■ 6. Amend section 52.212–5 by revising the date of the clause and paragraph (a)(1) 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 (Nov 2015)

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(a) * * *
(1) 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5 and 22

[FAC 2005–83; FAR Case 2015–008; Item III; Docket No. 2015–0008, Sequence No. 1]

RIN 9000–AN08

Federal Acquisition Regulation: Update to Product and Service Codes

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 correct the terminology relating to preparation and transmittal of synopses and update the descriptions of Federal product and service codes related to exemptions from service contract labor standards, to conform to the current Federal Procurement Data System Product and Service Codes Manual.

DATES: *Effective:* August 3, 2015.

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 Division at 202–501–4755. Please cite FAC 2005–83, FAR Case 2015–008.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are revising the FAR to amend 5.207 and 22.1003–4 to correct the terminology and update the descriptions of the Federal product and service codes to conform to the Federal Procurement Data System Product and Service Codes Manual, August 2011 Edition. There is no change to the groups covered, and the new descriptions better reflect product coverage.

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 it does not change the Federal Supply Groups covered. It only updates the descriptions of the listed product service groups to reflect the current Product and Service Codes Manual. It does not impact which products are subject to the service contract labor standards.

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 within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

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 5 and 22

Government procurement.

Dated: June 18, 2015.

William Clark,

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 5 and 22 as set forth below:

■ 1. The authority citation for 48 CFR parts 5 and 22 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 5—PUBLICIZING CONTRACT ACTIONS

5.207 [Amended]

- 2. Amend section 5.207 by—
- a. Removing from paragraph (a)(5) “Classification Code” and adding “Product or Service Code” in its place; and
 - b. Removing from paragraph (c)(13) “supply” and adding “product” in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Amend section 22.1003-4 by revising paragraph (c)(1)(ii) to read as follows:

22.1003-4 Administrative limitations, variations, tolerances, and exemptions.

* * * * *

(c) * * *

(1) * * *

(ii) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Product or Service Code (PSC) 6515, “Medical and Surgical Instruments, Equipment, and Supplies;” PSC 6525, “Imaging Equipment and Supplies: Medical, Dental, Veterinary;” PSC 6630, “Chemical Analysis Instruments;” and PSC 6655, “Geophysical Instruments,” are largely composed of the types of equipment exempted in this paragraph).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 2005-83; FAR Case 2014-020; Item IV; Docket No. 2014-0020; Sequence No. 1]

RIN 9000-AM86

Federal Acquisition Regulation; Clarification on Justification for Urgent Noncompetitive Awards Exceeding One Year

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 clarify that a determination of exceptional circumstances is needed when a noncompetitive contract awarded on the basis of unusual and compelling urgency exceeds 1 year, either at time of award or due to post-award modifications.

DATES: *Effective:* August 3, 2015.

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 2005-83, FAR Case 2014-020.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 79 FR 78378 on December 30, 2014. The rule was in response to a Government Accountability Office (GAO) report, GAO-14-304, Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight, dated March 2014. The proposed rule language at FAR 6.302-2(d) has been revised to further clarify it. One respondent submitted a comment on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment in the development of the final rule. The comment resulted in no changes to the final rule. A discussion of the comment is provided in the following paragraph.

Comment: The respondent stated that there should be no justification for extending any contract that is noncompetitive for more than one year.

Response: The extension of non-competitive contracts is allowable. The purpose of this case is to ensure that when the extension has been deemed to be warranted, that the proper justification and documentation are prepared and included in the contract file.

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