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Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2016–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–88; Introduction

AGENCIES: 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) 2005–88. 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 see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–88 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–88

Item	Subject	FAR case	Analyst
I	High Global Warming Potential Hydrofluorocarbons	2014–026	Gray.
II	Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations.	2015–020	Francis.
III	Basic Safeguarding of Contractor Information Systems	2011–020	Davis.
IV	Improvement in Design-Build Construction Process	2015–018	Glover.
V	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–88 amends the FAR as follows:

Item I—High Global Warming Potential Hydrofluorocarbons (FAR Case 2014–026)

This final rule implements Executive branch policy in the President’s Climate Action Plan to procure, when feasible, alternatives to high global warming potential—hydrofluorocarbons (HFCs). The rule also requires contractors to report annually the amount of HFCs contained in equipment delivered to the Government or added or taken out of Government equipment under service contracts. This will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order 13693 on Planning for Sustainability in the Next Decade. This rule applies to small entities because about three-quarters of the affected contractors are small businesses and precluding them would undermine the overall intent of this policy. However, to minimize the impact this rule could have on all businesses, especially small businesses, this rule only requires tracking and reporting on equipment that normally contain 50 or more pounds of HFCs. In

addition, this rule does not impose a labeling requirement for products that contain or are manufactured with HFCs, unlike the labeling requirement that is required by statute for ozone-depleting substances.

Item II—Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations (FAR Case 2015–020)

This final rule amends the FAR to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations. When FAR Case 2003–022 was published as a rule in 2004, the definition for SAT at FAR 2.101 was changed, but the drafters of the rule also inadvertently deleted the reference to overseas humanitarian or peacekeeping missions and the requisite doubling of the SAT in those circumstances. This rule reinstates the increased SAT for overseas acquisitions for peacekeeping or humanitarian operations. Accordingly, this rule provides contracting officers with more flexibility when contracting in support of overseas humanitarian or peacekeeping operations. This final rule does not place any new requirements on small entities.

Item III—Basic Safeguarding of Contractor Information Systems (FAR Case 2011–020)

This final rule amends the FAR to add a new FAR subpart 4.19 and contract clause 52.204–21 for the basic safeguarding of covered contractor information systems, *i.e.*, that process, store, or transmit Federal contract information. The clause does not relieve the contractor of any other specific safeguarding requirement specified by Federal agencies and departments as it relates to covered contractor information systems generally or other Federal requirements for safeguarding controlled unclassified information (CUI) as established by Executive Order 13556. Systems that contain classified information, or CUI such as personally identifiable information, require more than the basic level of protection. This rule will not have a significant economic impact on contractors (including small business concerns) or the Government.

Item IV—Improvement in Design-Build Construction Process (FAR Case 2015–018)

This final rule revises the FAR to implement section 814 of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015. When a two-phase design-build construction acquisition is valued at greater than \$4 million, section 814 requires the head of the contracting

activity to approve a contracting officer determination to select more than five offerors to submit phase-two proposals. The approval level is delegable no lower than the senior contracting official within the contracting activity. This rule change does not place any new requirements on small entities.

Item V—Technical Amendments

Editorial changes are made at FAR 1.106.

Dated: May 5, 2016.

William Clark,

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

Federal Acquisition Circular (FAC) 2005–88 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 2005–88 is effective May 16, 2016 except for items I, II, III, and IV, which are effective June 15, 2016.

Dated: May 4, 2016.

Claire M. Grady,

Director, Defense Procurement and Acquisition Policy.

Dated: May 5, 2016.

Jeffrey A. Koses,

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

Dated: April 28, 2016.

William P. McNally,

Assistant Administrator, Office of Procurement National Aeronautics and Space Administration.

[FR Doc. 2016–10995 Filed 5–13–16; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 7, 11, 23, 25, and 52

[FAC 2005–88; FAR Case 2014–026; Item I; Docket No. 2014–0026; Sequence 1]

RIN 9000–AM87

Federal Acquisition Regulation: High Global Warming Potential Hydrofluorocarbons

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 Executive branch policy in the President’s Climate Action Plan to procure, when feasible, alternatives to high global warming potential (GWP) hydrofluorocarbons (HFCs). This final rule will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order on Planning for Sustainability in the Next Decade.

DATES: *Effective:* June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, at 703–795–6328, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–88, FAR Case 2014–026.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 80 FR 26883, on May 11, 2015, to implement Executive branch policy in the President’s Climate Action Plan to procure, when feasible, alternatives to high GWP HFCs. This final rule will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order 13693, Planning for Federal Sustainability in the Next Decade, of March 25, 2015.

Sixteen respondents submitted 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 Significant Changes From the Proposed Rule

In response to public comments received, the final rule contains the following changes from the proposed rule:

- Clarified the definition of “high global warming potential hydrofluorocarbons” to make it specific to a particular end use.
- Included the use of reclaimed HFCs as products that minimize or eliminate the use, release, or emission of high GWP HFCs.

- Clarified that the clause prescription exception is for supplies that will be delivered outside the United States and its outlying areas as well as for contracts for services performed outside the United States and its outlying areas.

- Added in the clauses at 52.223–20 and 52.223–21 environmental, technical, and economic factors to consider when determining feasibility.

B. Analysis of Public Comments

1. General

a. Support the Objectives of the Rule

Comments: Many of the respondents expressed specific support for the objectives of the rule. Several respondents applauded DoD, GSA, and NASA in proposing that Federal agencies procure, when feasible, alternatives to high-GWP HFC refrigerants. Other respondents stated that the proposed rule is a step in the right direction and could have considerable impact on reducing the Government’s greenhouse gas emissions and helping Federal agencies and departments meet several Executive actions and orders pertaining to HFCs.

Response: Noted.

b. Oppose the Objectives of the Rule

Comment: One respondent believed that global warming is a farce and that the Government should not be allowed to acquire anything because of global warming.

Response: The FAR Council is responsible for the implementation of the Executive orders and policies of the Administration. DoD, NASA, and GSA have prepared this rule to implement and facilitate compliance with Executive Order 13693, Planning for Sustainability in the Next Decade, and the President’s Climate Action Plan.

2. Definition of “high global warming potential hydrofluorocarbons”

Various respondents commented on the definition of “high global warming potential hydrofluorocarbons.” One of these respondents questioned whether the identification of a lower GWP HFC alternative pursuant to the SNAP program meant that the Government would be required to use the alternative.

Response: The Councils have further clarified in the final rule that the term “high global warming potential hydrofluorocarbons” means any hydrofluorocarbons in a particular end use for which EPA’s Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives