

- b. Removing from paragraph (b)(14)(i) “(MAR 2020)” and adding “(NOV 2020)” in its place;
- c. Removing from paragraph (b)(15)(i) “(MAR 2020)” and adding “(NOV 2020)” in its place; and
- d. Removing from paragraph (b)(22)(i) “(MAY 2020)” and adding “(NOV 2020)” in its place.

The revision reads as follows:

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

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Nov 2020)

* * * * *

- 7. Amend section 52.219–1 by—
- a. Revising the date of the provision; and
- b. In paragraph (a), revising the definition “Small business concern”.

The revisions read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (Nov 2020)

(a) * * *

Small business concern—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (b) of this provision.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

* * * * *

- 8. Amend section 52.219–6 by revising the date of the clause and paragraph (a) to read as follows:

52.219–6 Notice of Total Small Business Set-Aside.

* * * * *

Notice of Total Small Business Set-Aside (Nov 2020)

(a) *Definition. Small business concern*, as used in this clause—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a

small business under the size standards in this solicitation.

(2) *Affiliates*, as used in paragraph (a)(1) of this clause, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

* * * * *

- 9. Amend section 52.219–7 by revising the date of the clause and paragraph (a) to read as follows:

52.219–7 Notice of Partial Small Business Set-Aside.

* * * * *

Notice of Partial Small Business Set-Aside (Nov 2020)

(a) *Definition. Small business concern*, as used in this clause—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(2) *Affiliates*, as used in paragraph (a)(1) of this clause, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

* * * * *

- 10. Amend section 52.219–28 by—
- a. Revising the date of the clause; and
- b. In paragraph (a), revising the definition “Small business concern”.

The revisions read as follow:

52.219–28 Post-Award Small Business Program Rerepresentation.

* * * * *

Post-Award Small Business Program Rerepresentation (Nov 2020)

(a) * * *

Small business concern—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause. Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In

determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

* * * * *

[FR Doc. 2020–21696 Filed 10–22–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2021–02; FAR Case 2019–019; Item III; Docket No. FAR 2019–0019, Sequence No. 1]

RIN 9000–AO02

Federal Acquisition Regulation: Update to Excess Personal Property Procedures

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 to amend the Federal Acquisition Regulation (FAR) to update internal Government procedures on how agencies can locate excess personal property and to remove obsolete requirements.

DATES: *Effective:* November 23, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868, or by email at mahruba.uddowla@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2021–02, FAR Case 2019–019.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are amending the FAR to update internal Government procedures related to excess personal property and to remove obsolete requirements. FAR part 2 defines “excess personal property” to mean any personal property under the control of a Federal agency that the agency head determines is not required for its needs or for the discharge of its responsibilities. Excess personal property is a mandatory source of supply for Federal agencies (see FAR 8.002). Agencies are required to satisfy their requirements for supplies from the excess personal property of other agencies, when practicable, before initiating a contract action. This rule updates FAR guidance on obtaining information about available excess personal property to reflect the current processes and sources established by GSA Federal Acquisition Service’s Office of Personal Property Management (PPMO), which helps agencies dispose of personal property that is no longer needed and alternately helps agencies acquire this excess personal property.

Federal policy and procedures relating to excess personal property are found in the Federal Management Regulations at 41 CFR part 102–36. FAR subpart 8.1, Excess Personal Property, contains information to ensure the acquisition workforce is aware of the Government’s policies on the use of excess personal property and provides the workforce with references to find more information about excess personal property.

FAR subpart 8.1 has not been substantively amended since its original publication in 1983. As a result, the subpart reflects outdated and obsolete procedures, such as agencies having to submit GSA Form 1539, Request for Excess Personal Property, to get information on the availability of excess personal property; the GSA Form 1539 was discontinued in 1997. Similarly, agencies can no longer look at “reports and samples” of excess personal property in GSA regional offices or at excess personal property “catalogs and bulletins” issued by GSA.

Based on input from the PPMO, FAR subpart 8.1 is amended to reflect current practices for making excess personal property information available to agencies (*i.e.*, GSAXcess®) and how agencies can contact the PPMO.

Specifically, this rule removes references to catalogs and bulletins issued by GSA, the use of a discontinued GSA form, and the ability to examine reports and samples of excess personal property in GSA

regional offices. Instead, the rule identifies the website through which agencies can find information on available excess personal property. Additionally, this rule updates the name of the offices handling excess personal property within GSA and provides a website containing contact information for those offices.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-The-Shelf (COTS) Items

This rule simply removes and updates obsolete guidance that is used solely for the internal operating procedures of the Government. This rule does not impose any new requirements on contracts at or below the SAT, or to acquisitions for commercial items, including COTS items.

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

The statutory provision that applies to the publication of the FAR is 41 U.S.C. 1707. Specifically, 41 U.S.C. 1707(a)(1) 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 DoD, GSA, and NASA are merely removing and updating obsolete information in the FAR that is used solely for the internal operating procedures of the Government.

IV. 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 rule is not a significant regulatory action and therefore, this rule was not subject to the review of the Office of Information and Regulatory Affairs under section 6(b) of E.O. 12866.

This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

This 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 Part 8

Government procurement.

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 part 8 as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 8 continues to read as follows:

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

8.102 [Amended]

■ 2. Amend section 8.102 by removing the word “must” twice and adding “shall” in their places, respectively.

■ 3. Revise section 8.103 to read as follows:

8.103 Information on available excess personal property.

Information regarding the availability of excess personal property can be obtained through—

(a) Reviewing and requesting available excess personal property in GSAXcess® (see <https://gsaxcess.gov>); and

(b) Personal contact with GSA or the activity holding the property.

■ 4. Amend section 8.104 by—

■ a. Removing “102–36.90” and “regional office” and adding “102–

36.220” and “Personal Property Management office” in their places, respectively.

■ b. Adding a sentence at the end of the section.

The addition reads as follows:

8.104 Obtaining nonreportable property.

* * * Visit www.gsa.gov/ppmo for contact information.

[FR Doc. 2020–21697 Filed 10–22–20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 12, 13, 43, and 52

[FAC 2021–02; FAR Case 2018–021; Item IV; Docket FAR–2019–0031, Sequence No. 1]

RIN 9000–AN79

Federal Acquisition Regulation: Reserve Officer Training Corps and Military Recruiting on Campus

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 the United States Code section that prohibits the award of certain Federal contracts to institutions of higher education that prohibit Reserve Officer Training Corps units or military recruiting on campus.

DATES: *Effective:* November 23, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or zenaida.delgado@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2021–02, FAR Case 2018–021.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule on September 24, 2019, at 84 FR 49974, to implement 10 U.S.C. 983, which prohibits the award of certain Federal contracts with covered funds to institutions of higher education that prohibit Reserve Officer Training Corps (ROTC) units or military recruiting on campus.

“Covered funds” is defined in 10 U.S.C. 983 to be any funds made available for DoD, Department of Transportation, Department of Homeland Security, or National Nuclear Security Administration of the Department of Energy, the Central Intelligence Agency, or for any department or agency in which regular appropriations are made in the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act. None of these covered funds may be provided by contract or grant to an institution of higher education (including any sub-element of such institution) that has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents, the Secretary of Defense from establishing or operating a Senior ROTC at that institution (or any sub-element of that institution); or that either prohibits, or in effect prevents, a student at that institution (or any sub-element of that institution) from enrolling in a ROTC unit at another institution of higher education.

The statute has similar sanctions against these covered funds being provided to an institution of higher education (or any sub-element of an institution) that has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents, the Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting, where such policy or practice denies the military recruiter access that is at least equal in quality and scope to the access to campuses and students provided to any other employer; or access to information pertaining to the students’ names, addresses, telephone listings, dates and places of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

The meaning and effect of the term “equal in quality and scope” was explained in the U.S. Supreme Court decision in *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 126 S. Ct. 1297 (2006). The term means the same access to campus and students provided by the school to any other nonmilitary recruiters or employers receiving the most favorable access. The focus is not on the content of a school’s recruiting policy, but instead on the result achieved by the policy and compares the access provided military recruiters to that provided other recruiters. Therefore, compliance with

10 U.S.C. 983 would be considered insufficient if the policy results in a greater level of access for other recruiters than for the military.

The statute provides an exception whereby any Federal funding provided to an institution of higher education or to an individual that is available solely for student financial assistance, related administrative costs, or costs associated with attendance may be used for the purpose for which the funding is provided.

Four 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 is provided as follows:

A. Summary of Changes

There are no changes as a result of comments on the proposed rule. Technical changes were made to the proposed rule.

B. Analysis of Public Comments

Comment: All four respondents strongly supported the proposed FAR rule.

Response: Noted.

C. Other Changes

Made technical changes at FAR 9.405–1, 12.503, and 13.005.

Added language at FAR 9.110–4(b) and 43.105(c) to highlight that the prohibition does not apply to acquisitions at or below the simplified acquisition threshold or to acquisitions of commercial items, including commercially available off-the-shelf items.

Included an exception for contractors that have been declared ineligible pursuant to 10 U.S.C. 983 with a pointer reference to FAR 9.110 and 9.405–1(b), at FAR 9.400(b).

Moved the “Institution of higher education” definition within the FAR clause at 52.209–14(a) to place the definitions in alphabetical order.

III. Expected Impact of the Final Rule

DoD, GSA, and NASA do not expect a cost impact on the public or institutions of higher learning or on the Government because covered agencies already have regulations in place to address their statutory responsibilities. These agencies and the public will be required to comply with the same requirement, but the requirement will now be located in the FAR.