

entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."
 (d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

■ 17. Amend section 52.222-38 by revising the date of the provision and the provision to read as follows:

52.222-38 Compliance with Veterans' Employment Reporting Requirements.
 * * * * *

COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (SEP 2010)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Veterans), it has submitted the most recent VETS-100A Report required by that clause.

(End of provision)

■ 18. Amend section 52.244-6 by revising the date of the clause and paragraph (c)(1)(v) to read as follows:

52.244-6 Subcontracts for Commercial Items.
 * * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (SEP 2010)

* * * * *
 (c)(1) * * *

(v) 52.222-35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212(a));
 * * * * *
 [FR Doc. 2010-24218 Filed 9-28-10; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 25 and 52

[FAC 2005-46; FAR Case 2010-012; Item II; Docket 2010-0102, Sequence 1]

RIN 9000-AL71

Federal Acquisition Regulation; Certification Requirement and Procurement Prohibition Relating to Iran Sanctions

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 102 and partially implements section 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, as amended (the Iran Sanctions Act). Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of section 106 in FAR Case 2010-018.

DATES: *Effective Date:* September 29, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-46, FAR Case 2010-012, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010-012" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010-012." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010-012" on your attached document.

- *Fax:* 202-501-4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Attn: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-46, FAR Case 2010-012, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219-0202. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-46, FAR Case 2010-012.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements section 102 and partially implements section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), enacted July 1, 2010. Section 102, entitled "Expansion of Sanctions under the Iran Sanctions Act of 1996," requires that, not later than 90 days after the date of the enactment of Public Law 111-195, the FAR shall be revised to require a certification from each person that is a prospective contractor that the person, and any person owned or controlled by the person, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

This interim rule has added in FAR subpart 25.7 a new section 25.703, Prohibition on contracting with entities that engage in certain activities relating to Iran. This section provides a definition of "person" at FAR 25.703-1, which is applicable to both of the following subsections.

FAR 25.703-2 implements section 102 of Public Law 111-195. It explains the certification requirement at FAR 25.703-2(a) and provides a summary of the activities for which sanctions may be imposed, which are described in

more detail in section 5 of the Iran Sanctions Act.

Remedies are located at FAR 25.703–2(b). If the head of an executive agency determines that a person has submitted a false certification, the agency shall take one or more of the following actions:

(1) The contracting officer may terminate the contract.

(2) The suspending official may suspend the contractor in accordance with the procedures in FAR subpart 9.4.

(3) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in FAR subpart 9.4.

Section 102 also provides that the remedies set forth shall not apply with respect to the procurement of eligible products, as defined in section 308(4) of the Trade Agreements Act of 1974 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b)). The Councils interpreted this provision to mean that in acquisitions that are subject to trade agreements, eligible products from designated countries are not subject to the certification requirement (FAR 25.703–2(c)) or the remedies.

This interim rule establishes a waiver procedure at FAR 25.703–2(d), as authorized by the statute. The President may waive the requirement of subsection 25.703–2(a) on a case-by-case basis, if the President determines and certifies in writing to the appropriate congressional committees (Committee on Armed Services of the Senate, Committee on Finance of the Senate, Committee on Banking, Housing, and Urban Affairs of the Senate, Committee on Foreign Relations of the Senate, Committee on Armed Services of the House of Representatives, Committee on Ways and Means of the House of Representatives, Committee on Financial Services of the House of Representatives, and Committee on Foreign Affairs of the House of Representatives) that it is in the national interest to do so. “Appropriate congressional committees” is defined in section 101 of Public Law 111–195, which refers to section 14 of the Iran Sanctions Act, as amended by section 102 paragraph (f) of Public Law 111–195. In addition, section 102 amended section 6 of the Iran Sanctions Act to require certification in writing to the Committee on Armed Services of the Senate and Committee on Armed Services of the House of Representatives, in addition to the “appropriate congressional committees,” as defined in section 14 of the Iran

Sanctions Act. The President may delegate this authority.

The statutory certification requirement is communicated to offerors through a new provision at FAR 52.225–25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification. This requirement is also applied to acquisition of commercial items at FAR 52.212–3, paragraph (o) (see Section B, Determinations). Offerors will also be able to make an annual certification through the Online Representations and Certifications Application (ORCA), if the offeror is registered in the Central Contractor Registration. Therefore, conforming changes have been made to FAR part 4 and the FAR clause at 52.204–8, Annual Representations and Certifications.

Section 106 of Public Law 111–195 (22 U.S.C. 8515) is partially implemented in new FAR subsection 25.703–3. Agencies are prohibited from entering into or extending a contract for the procurement of goods or services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the Excluded Parties List System. There will be further implementation of section 106 in FAR Case 2010–018.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Determinations

The Federal Acquisition Regulatory (FAR) Council has made the following determinations with respect to the rule’s applicability of section 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), to contracts in amounts not greater than the simplified acquisition threshold (SAT), contracts for the acquisition of commercial items, and contracts for the acquisition of commercially available off-the-shelf (COTS) items.

1. *Applicability to Contracts at or Below the Simplified Acquisition Threshold*

Section 4101 of Pub. L. 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 429), governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to them. FASA provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or

below the SAT, the law will apply to them. Therefore, given that the requirements of sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 were enacted to widen the sanctions against Iran, the FAR Council has determined that it is in the best interest of the Federal Government to apply this rule to all acquisitions including contracts at or below the SAT, as defined at FAR 2.101. An exception for acquisitions at or below the SAT would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

2. *Applicability to Contracts for the Acquisition of Commercial Items*

Section 8003 of Public Law 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 430), governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items.

FASA provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Therefore, given that the requirements of sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 were enacted to widen the sanctions against Iran, the FAR Council has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, as defined at FAR 2.101. An exception for contracts for the acquisition of commercial items would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

3. *Applicability to Contracts for the Acquisition of (COTS) Items*

Section 4203 of Public Law 104–106, the Clinger-Cohen Act of 1996 (41 U.S.C. 431), governs the applicability of laws to contracts for the acquisition of COTS items, and is intended to limit the applicability of laws to them. Clinger-Cohen provides that if a provision of law contains criminal or civil penalties, or if the Administrator for Federal Procurement Policy makes a written

determination that it is not in the best interest of the Federal Government to exempt contracts for the acquisition of COTS items, the provision of law will apply. Therefore, given that the requirements of sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 were enacted to widen the sanctions against Iran, the Administrator for Federal Procurement Policy has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of COTS items, as defined at FAR 2.101. An exception for contracts for the acquisition of COTS items would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

C. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule will only have significant impact on an offeror that is engaging in an activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act or that is exporting sensitive technology to Iran. Domestic entities generally do not engage in activity that would cause them to be subject to the procurement bans described in this rule due to current restrictions on trade with Iran (*see, e.g.*, Department of the Treasury Office of Foreign Assets Control regulations at 31 CFR 560). Accordingly, it is expected that the number of domestic entities significantly impacted by this rule will be minimal, if any. The Regulatory Flexibility Act is for the protection of United States small entities, not foreign entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-46, FAR Case 2010-012) in all correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule implements sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), which was signed on July 1, 2010. Section 102 must be implemented within 90 days (*i.e.*, September 29, 2010). Section 106 was effective upon enactment banning activity that takes place on or after the date that is 90 days after enactment. However, pursuant to 41 U.S.C. 418b and FAR 1.501-3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 4, 25, and 52

Government procurement.

Dated: September 21, 2010.

Edward Loeb,
Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.1202 by redesignating paragraphs (bb), (cc), and (dd) as paragraphs (cc), (dd), and (ee), respectively, and adding a new paragraph (bb) to read as follows:

4.1202 Solicitation provision and contract clause.

* * * * *

(bb) 52.225-25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification.

* * * * *

PART 25—FOREIGN ACQUISITION

■ 3. Revise section 25.700 to read as follows:

25.700 Scope of subpart.

This subpart implements—
(a) Economic sanctions administered by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury prohibiting transactions involving certain countries, entities, and individuals;

(b) The Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174);

(c) The Iran Sanctions Act of 1996 (Iran Sanctions Act) (Pub. L. 104-172; 50 U.S.C. 1701 note), including amendments by the Iran Freedom Support Act (Pub. L. 109-293) and section 102 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195); and

(d) Section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8515).

■ 4. Amend section 25.701 by revising the section heading to read as follows:

25.701 Restrictions administered by the Department of the Treasury on acquisitions of supplies or services from prohibited sources.

* * * * *

■ 5. Add sections 25.703 through 25.703-3 to read as follows:

25.703 Prohibition on contracting with entities that engage in certain activities relating to Iran.

25.703-1 Definition.

Person—
(1) Means—
(i) A natural person;
(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and
(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

25.703-2 Iran Sanctions Act.

(a) *Certification.*
(1) As required by the Iran Sanctions Act, unless an exception applies or a waiver is granted in accordance with paragraph (c) or (d) of this subsection, each offeror must certify that the 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.

(2) In general, the following activities, which are described in detail in section 5 of the Iran Sanctions Act, are activities for which sanctions may be imposed on or after July 1, 2010—

(i) Knowingly making an investment of \$20,000,000 or more, or a combination of investments of \$5,000,000 or more that equal or exceed \$20,000,000 in a 12-month period, that directly and significantly contribute to the enhancement of Iran's ability to develop petroleum resources.

(ii) Knowingly selling, leasing or providing to Iran goods, services, technology, information, or support with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more, that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries.

(iii) Knowingly selling or providing to Iran refined petroleum products with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more.

(iv) Knowingly selling, leasing, or providing to Iran goods, services, technology, information, or support with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more, that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products, including—

(A) Certain insurance or reinsurance, underwriting, financing, or brokering for the sale, lease, or provision of such items, or

(B) Providing ships or shipping services to deliver refined petroleum products to Iran.

(v) Exporting, transferring, or otherwise providing to Iran any goods, services, technology or other items knowing that it would contribute materially to the ability of Iran to acquire or develop chemical, biological, or nuclear weapons or related technologies, or acquire or develop destabilizing numbers and types of advanced conventional weapons.

(b) *Remedies.* Upon the determination of a false certification under paragraph (a) of this subsection, the agency shall take one or more of the following actions:

(1) The contracting officer may terminate the contract.

(2) The suspending official may suspend the contractor in accordance with the procedures in subpart 9.4.

(3) The debaring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in subpart 9.4.

(c) *Exception for trade agreements.* The certification requirements of paragraph (a) of this subsection do not apply with respect to the procurement of eligible products, as defined in section 308(4) of the Trade Agreements Act of 1974 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b)) (*see* subpart 25.4).

(d) *Waiver.* (1) The President may waive the requirement of subsection 25.703-2(a) on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees (Committee on Armed Services of the Senate, Committee on Finance of the Senate, Committee on Banking, Housing, and Urban Affairs of the Senate, Committee on Foreign Relations of the Senate, Committee on Armed Services of the House of Representatives, Committee on Ways and Means of the House of Representatives, Committee on Financial Services of the House of Representatives, and Committee on Foreign Affairs of the House of Representatives) that it is in the national interest to do so.

(2) An agency or contractor seeking a waiver of the requirement shall submit the request through the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP shall consult with the President's National Security Council, the Office of Terrorism and Financial Intelligence in the Department of the Treasury, and the Office of Terrorism Finance and Economic Sanctions Policy, Bureau of Economic, Energy, and Business Affairs in the State Department, allowing sufficient time for review and approval.

(3) In general, all waiver requests should include the following information:

(i) Agency name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(ii) Offeror's name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(iii) Description/nature of product or service.

(iv) The total cost and length of the contract.

(v) Justification, with market research demonstrating that no other offeror can provide the product or service and

stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that conducts activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(vi) Documentation regarding the offeror's past performance and integrity (see the Past Performance Information Retrieval System (including the Federal Awardee Performance Information and Integrity System at <http://www.ppirs.gov>) and any other relevant information).

(vii) Information regarding the offeror's relationship or connection with other firms that conduct activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(viii) The activities in which the offeror is engaged for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

25.703-3 Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, section 106.

The head of an executive agency may not enter into or extend a contract for the procurement of goods or services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the Excluded Parties List System at <https://www.epls.gov/>.

■ 6. Amend section 25.1103 by adding paragraph (e) to read as follows:

25.1103 Other provisions and clauses.

* * * * *

(e) The contracting officer shall include in each solicitation for the acquisition of products or services the provision at 52.225-25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.204-8 by—

■ a. Revising the date of the clause;

■ b. Adding a sentence to the end of paragraph (c)(1)(xviii); and

■ c. Redesignating paragraph (c)(1)(xix) as paragraph (c)(1)(xx), and adding a new paragraph (c)(1)(xix).

The revised and added text reads as follows:

52.204-8 Annual Representations and Certifications.

* * * * *

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (SEP 2010)

* * * * *

(c)(1) * * *
(xviii) * * * This provision applies to all solicitations.

(xix) 52.225–25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification. This provision applies to all solicitations.

* * * * *

- 8. Amend section 52.212–3 by—
- a. Revising the date of the clause;
- b. Removing from the introductory text “through (m) of” and adding “through (o) of” in its place;
- c. Removing from the first undesignated paragraph of (b)(2) “through (n) of” and adding “through (o) of” in its place; and
- d. Adding paragraph (o).

The revised and added text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (SEP 2010)

* * * * *

(o) Sanctioned activities relating to Iran. (1) Unless a waiver is granted or an exception applies as provided in paragraph (o)(2) of this provision, by submission of its offer, the offeror certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(2) The certification requirement of paragraph (o)(1) of this provision does not apply if—

(i) This solicitation includes a trade agreements certification (e.g., 52.212–3(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

* * * * *

- 9. Add section 52.225–25 to read as follows:

52.225–25 Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification.

As prescribed at 25.1103(e), insert the following provision:

PROHIBITION ON ENGAGING IN SANCTIONED ACTIVITIES RELATING TO IRAN—CERTIFICATION (SEP 2010)

(a) *Definition.*

Person—

(1) Means—

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and
(2) Does not include a government or governmental entity that is not operating as a business enterprise.

(b) *Certification.* Except as provided in paragraph (c) of this provision or if a waiver has been granted in accordance with FAR 25.703–2(d), by submission of its offer, the offeror certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran’s ability to acquire or develop certain weapons.

(c) *Exception for trade agreements.* The certification requirement of paragraph (b) of this provision does not apply if—

(1) This solicitation includes a trade agreements certification (e.g., 52.225–4, 52.225–11 or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

[FR Doc. 2010–24165 Filed 9–28–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 15, 42, and 49

[FAC 2005–46; FAR Case 2008–016; Item III; Docket 2009–0032, Sequence 1]

RIN 9000–AL45

Federal Acquisition Regulation; Termination for Default Reporting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to establish procedures for contracting officers to provide contractor information, such as terminations for cause or default and defective cost or pricing data, into the Past Performance Information System (PPIRS) and Federal Awardee Performance and Integrity Information

System (FAPIIS) module within PPIRS. This information will assist the contracting officer in making an informed source selection and award decision. Instructions on access to the FAPIIS module and how to input data into the FAPIIS module will be available at <http://www.ppirs.gov/fapiis.html>.

DATES: *Effective Date:* October 29, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Jeritta Parnell, Procurement Analyst, at (202) 501–4082. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–46, FAR case 2008–016.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed on a final rule amending the FAR to revise the contractor performance information process. This case sets forth requirements for contracting officers to report defective cost or pricing data and terminations for cause or default into the FAPIIS module of the PPIRS. Evaluation of past performance information, especially terminations, manages risks associated with timely, effective, and cost efficient completion of contracts, a key objective of the President’s March 4, 2009, Memorandum on Government Contracting.

The Councils published in the **Federal Register** at 74 FR 45394 on September 2, 2009, a proposed rule with request for comments. Four respondents submitted fifteen comments.

B. Discussion of Public Comments

The comments received were grouped under six general topics. A summary of these topics and a discussion of the comments and the changes made to the proposed rule as a result of those comments are provided below:

1. Certification Regarding Responsibility Matters

Comment: One respondent recommended deletion of the certification on terminations found in FAR clause 52.209–5, Certification Regarding Responsibility Matters, since the information concerning terminations will be available to contracting officers in PPIRS. The respondent further suggested that conforming deletions should also be made at FAR 52.204–8(c)(1)(v) and in the Online Representations and Certifications Application (ORCA) Web site.

Response: The Councils disagree. PPIRS is the repository for