

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 21, 2010.

**Edward L. Connor,**

*Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2010-25340 Filed 10-6-10; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 25

[FAR Case 2009-041; Docket 2010-0105, Sequence 1]

RIN 9000-AL65

#### Federal Acquisition Regulation; Sudan Waiver Process

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

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise section 25.702, Prohibition on contracting with entities that conduct restricted business operations in Sudan, to add specific criteria that an agency must address in a waiver request and a waiver consultation process regarding foreign policy aspects of the waiver request for consultations. This information will be provided, in a waiver request, to the President or his appointed designee for consideration on whether the prohibition on awarding a contract to a contractor that conducts business in Sudan should be waived.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before December 6, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR Case 2009-041 by any of the following methods:

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

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009-041" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a

Comment" that corresponds with "FAR Case 2009-041." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009-041" 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 FAR Case 2009-041, 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 Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAR Case 2009-041.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) published a final rule, FAR Case 2008-004, Prohibition on Restricted Business Operations in Sudan and Imports from Burma, in the **Federal Register** at 74 FR 40463 on August 11, 2009, amending the FAR to implement section 6 of the Sudan Accountability and Divestment Act of 2007, Public Law 110-174. Section 6 requires certification in each contract entered into by an Executive Agency that the contractor does not conduct certain business operations in Sudan as described in the act. Additionally, section 6 establishes the President's authority to waive this requirement, on a case-by-case basis, if the President determines and certifies in writing to the appropriate congressional committees that it is in the national interest to do so.

Section 6 of the Sudan Accountability and Divestment Act of 2007 was implemented in the FAR but did not include a waiver consultation process and specific criteria for the waiver request. With the addition of these changes, the FAR will provide consistent guidance on specific criteria that must be included in the waiver request for consideration; and establish a consultation process to ensure all waiver request are reviewed by the appropriate agency experts.

The Councils propose to amend FAR 25.702-4 to add (1) waiver criteria that

agencies must address when requesting a waiver to enter into a contract with a firm that conducts restricted business operations in Sudan that will include specific criteria for the waiver request; and (2) a waiver consultation process that will require all requests to be submitted through the Office of Federal Procurement Policy (OFPP) to the President or his appointed designee for consideration. OFPP will be required to consult with the President's National Security Council, Office of African Affairs and the Department of State Sudan Office and Sanctions Office on foreign policy matters relevant to the waiver request and include this information in the recommendation to the President. All waiver requests must clearly explain why the product or service must be procured from the offeror for which the waiver is requested and why it is in the national interest to waive the statutory prohibition against contracting with an offeror that conducts prohibited business operations in Sudan. In addition, the waiver request must address any humanitarian efforts engaged in by the offeror, the human rights impact of doing business with that offeror, and the extent of the offeror's business operations in Sudan. All of the information required to be included in the waiver request will be considered in determining whether to recommend that the President waive the prohibition.

Additionally, individual and class waiver requests will be considered for a specific contract or class of contracts, as long as the waiver request has been reviewed and cleared by the agency head prior to submitting it to OFPP and the request includes the appropriate waiver information specified at FAR 25.702-4(c)(3). However, a waiver will not be issued for an indefinite period of time, and may be cancelled, if warranted.

In accordance with section 6 of the Sudan Accountability and Divestment Act of 2007, the Administrator of Federal Procurement Policy is required to submit semiannual reports, on April 15th and October 15th, to Congress, on waivers approved by the President. OFPP has submitted two reports to Congress since the publication of the first rule, FAR Case 2008-004, Prohibition on Restricted Business Operations in Sudan and Imports from Burma, but is proposing to include this reporting requirement in the FAR to emphasize this waiver process and reporting requirement.

This is a significant regulatory action and, therefore, was subject to review under section 6 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. Regulatory Flexibility Act

The Councils do not expect this proposed 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 the rule does not impose any additional requirements on small businesses. An Initial Regulatory Flexibility Analysis has, therefore, 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 (FAR Case 2000-041) in all correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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.*

#### List of Subjects in 48 CFR Part 25

Government procurement.

Dated: September 28, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 25 as set forth below:

#### PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 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).

2. Amend section 25.702-4 by revising paragraph (b), and adding paragraphs (c) and (d) to read as follows:

##### 25.702-4 Waiver.

\* \* \* \* \*

(b) An agency seeking waiver of the requirement shall submit the request through the Administrator of 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, Office of African Affairs, and the Department of State Sudan Office and Sanctions Office to assess foreign policy

aspects of making a national interest recommendation.

(c) Agencies may request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled if warranted.

(1) A class waiver may be requested only when the class of supplies is not available from any other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request must be reviewed and cleared by the agency head.

(3) All waiver requests must 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 restricted business operations in Sudan, including consideration of foreign policy aspects identified in consultation(s) pursuant to 25.702-4(b).

(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 prohibited business operations in Sudan.

(viii) Any humanitarian efforts engaged in by the offeror, the human rights impact of doing business with the offeror for which the waiver is requested, and the extent of the offeror's business operations in Sudan.

(d) The consultation in 25.702-4(b) and the information in 25.702-4(c)(3) will be considered in determining whether to recommend that the President waive the requirement of subsection 25.702-2. In accordance with section 6(c) of the Sudan Accountability and Divestment Act of 2007, OFPP will submit a report to Congress, semiannually on April 15th and October 15th, on the waivers granted.

[FR Doc. 2010-25266 Filed 10-6-10; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R8-ES-2010-0013]  
[MO 92210-0-0008-B2]

#### Endangered and Threatened Wildlife and Plants; 12-month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list the Sacramento splittail (*Pogonichthys macrolepidotus*) as endangered or threatened under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing the Sacramento splittail is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the Sacramento splittail or its habitat at any time.

**DATES:** The finding announced in this document was made on October 7, 2010.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R8-ES-2010-0013. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, San Francisco Bay Delta Fish and Wildlife Office, 650 Capitol Mall, Sacramento, CA 95814. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

**FOR FURTHER INFORMATION CONTACT:** Dan Castelberry, San Francisco Bay Delta Fish and Wildlife Office (see **ADDRESSES**); by telephone at 916-930-5632; or by facsimile at 916-930-5654. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened