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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAC 2005-69; FAR Case 2013-011; Item IV; Docket 2013-0011,
Sequence 1]

RIN 9000-AM16

Federal Acquisition Regulation; Repeal of Sunset for Certain
Protests of Task or Delivery Order Contracts

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 implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year 2013. This section removes the sunset date for protests against certain orders under a task-order contract or delivery-order contract for title 10 agencies only.

DATES: Effective: [INSERT DATE 30 DAYS AFTER PUBLICATION
IN THE FEDERAL REGISTER.]

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 2005-69, FAR Case 2013-011.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing this final rule to amend the FAR to implement section 830 of the 2013 NDAA (Pub. L. 112-239) enacted January 2, 2013, for agencies covered by title 10 of the United States Code, namely DoD, NASA, and Coast Guard. This section removes the sunset date for protests against the issuance or proposed issuance of an order, valued at more than \$10 million, under a task-order contract or delivery-order contract for title 10 agencies only. The authority to protest the placement of such orders does not expire for DoD, NASA, and the Coast Guard. This rule does not affect title 41 agencies, which continue to have a sunset date of September 30, 2016.

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 FAR. 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 operation 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 this rule reflects the statutory elimination of the sunset date for protest for title 10 agencies. The FAR revision informs the acquisition community of this change.

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 and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The final 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 Subject in 48 CFR Part 16

Government procurement.

Dated: July 26, 2013.

William Clark,
Acting 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 16 as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 16 continues to read as follows:

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

2. Amend section 16.505 by revising paragraph (a)(10)(ii) to read as follows:

16.505 Ordering.

(a) * * *

(10) * * *

(ii) The authority to protest the placement of an order under (a)(10)(i)(B) of this section expires on September 30, 2016, for agencies other than DoD, NASA, and the Coast Guard (41 U.S.C. 4103(d) and 41 U.S.C. 4106(f)). The authority to protest the placement of an order under (a)(10)(i)(B) of this section does not expire for DoD, NASA, and the Coast Guard.

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