



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803 and 1852

[Notice: 23-075]

RIN 2700-AE69

NASA Federal Acquisition Regulation Supplement: Accommodating the Incorporation, Transfer, and Reorganization of Defense Acquisition Statutes (NFS Case 2022-N002)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: National Aeronautics and Space Administration (NASA) is issuing a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to conform to changes to the U.S. Code pursuant to a section of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021.

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

FOR FURTHER INFORMATION CONTACT: Andrew O'Rourke, NASA HQs, Office of Procurement Management and Policy Division, LP-011, 300 E. Street SW, Washington, DC 20456-0001. Telephone 202-358-4560; facsimile 202-358-3082.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the NASA FAR Supplement (NFS) to change references to Title 10 of the U.S. Code. The William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283), contains Title XVIII, Transfer and Reorganization of Defense Acquisition Statutes, sections 1801-1885. Title XVIII, Sections 1801-1885, transfers, reorganizes (including making conforming changes), redesignates, and consolidates defense acquisition statutes into Part V of subtitle A, Acquisition, of Title 10 of the

U.S. Code. Title XVIII also creates a more rational organization of acquisition statutes, loosely following the Federal Acquisition Regulation structure. The genesis of Title XVIII stems, in large part, from a Section 809 Panel recommendation to consolidate and reorganize all Department of Defense (DOD)-related acquisition statutes into a single Part V because the then-existing statutory structure was cumbersome, haphazardly arranged, confusing and difficult to navigate. Congress implemented a version of this recommendation when it established a new Part V in the FY 2019 NDAA, in Section 801—Framework for New Part V of Subtitle A, and Sections 806–809—Redesignation of Numerous DOD Statutes. The FY 2019 NDAA did not transfer statutes into the newly created Part V of Title 10. Title XVIII, sections 1801-1885, of the FY 2021 NDAA transfers existing Title 10 acquisition statutes into the Part V shell. FY 2021 NDAA Title XVIII sections 1801-1885 has an effective date of January 1, 2022.

This rule does not add any new solicitation provisions or contract clauses. This rule merely revises references to Title 10 of the U.S. Code in the NASA FAR Supplement (NFS) including in part 1852, as appropriate. It does not add any new burdens because the case does not add or change any requirements with which vendors must comply.

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 Federal Acquisition Regulation. 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 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 NASA is not issuing a new regulation; rather, this rule is merely an editorial change to Title 10 of the U.S. Code in the NASA FAR Supplement (NFS).

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. requirements with which vendors must comply.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a “major rule” may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule has been reviewed and determined by OMB not to be a “major rule” under 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble). Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VI. Paperwork Reduction Act

The 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 Parts 1803 and 1852

Government procurement.

Erica Jones,
NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1803 and 1852 are amended as follows:

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for part 1803 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

1803.900 [Amended]

2. Amend section 1803.900 in paragraph (a) by removing “2409” and adding in its place “4701”.

1803.903 [Amended]

3. Amend section 1803.903 in paragraph (a) by removing “2409” and adding in its place “4701”.

1803.906 [Amended]

4. Amend section 1803.906 in paragraphs (b)(2), (c), and (d) by removing “2409” and adding in its place “4701”.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

6. Amend section 1852.203-71:

a. By revising the date of the clause; and

b. In paragraph (a) by removing “2409” and adding in its place “4701”.

The revision reads as follows:

1852.203-71 Requirement to inform employees of whistleblower rights.

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REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS ((INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER))

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7. Amend section 1852.216-90:

a. By revising the date of the clause; and

b. In paragraphs (1) and (2) by removing “2409” and adding in its place “4701”.

The revision reads as follows:

1852.216-90 Allowability of legal costs incurred in connection with a whistleblower proceeding.

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ALLOWABILITY OF LEGAL COSTS INCURRED IN CONNECTION WITH A WHISTLEBLOWER PROCEEDING ((INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER))

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