

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 2, 22, and 52**

[FAC 2020–06; FAR Case 2020–001; Item I; Docket No. FAR–2020–0001; Sequence No. 1]

RIN 9000–AO03

**Federal Acquisition Regulation:
Revocation of Executive Order on
Nondisplacement of Qualified Workers**

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 remove the FAR subpart on nondisplacement of qualified workers. This final rule implements an Executive order which revoked the previous Executive order on this topic.

DATES: *Effective:* June 5, 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. Please cite FAC 2020–06, FAR Case 2020–001.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing a final rule amending the FAR to implement Executive Order (E.O.) 13897 of October 31, 2019, Improving Federal Contractor Operations by Revoking Executive Order 13495 (published in the **Federal Register** on November 5, 2019, at 84 FR 59709). E.O. 13897 revokes E.O. 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts.

E.O. 13495 required service contractors and their subcontractors to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified.

This final rule amends the FAR to delete FAR subpart 22.12 in its entirety as well as the corresponding clause at FAR 52.222–17, Nondisplacement of Qualified Workers. FAR 1.106, 2.101, and clause 52.212–5 are also amended

to delete references to the revoked E.O. 13495, FAR subpart 22.12, and FAR 52.222–17. Contracting officers should not take any action on any complaints filed under former FAR subpart 22.12.

The Department of Labor (DOL) rescinded its implementing regulations on January 31, 2020 (85 FR 5567).

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

This rule does not add any new solicitation provisions or clauses. The FAR rule removes a requirement for service contractors and their subcontractors to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified.

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

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at Title 41 of the United States Code). 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 it is simply removing a requirement that has become obsolete as a result of an executive action that compelled the Federal Acquisition Regulatory Council to rescind the requirement. See section 2 of E.O. 13897.

IV. Executive Orders 12866 and 13563

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 rule is not subject to E.O. 13771, 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

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The FAR rule information collection requirements were collected under the approval authority granted to the DOL Wage and Hour Division currently cleared by the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*, under OMB control number 1235–0025, Nondisplacement of Qualified Workers Under Service Contracts, Executive Order 13495. The Wage and Hour Division has requested a discontinuation of this collection as a result of E.O. 13897.

List of Subjects in 48 CFR Parts 1, 2, 22, and 52

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 parts 1, 2, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 22, and 52 continues to read as follows:

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

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by removing from the table the entries “22.12” and “52.222–17”.

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 3. Amend section 2.101(b) in the definition “United States” by removing paragraph (4) and redesignating paragraphs (5) through (12) as paragraphs (4) through (11).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.12 [Removed and Reserved]

■ 4. Remove and reserve subpart 22.12.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 5. Amend section 52.212–5 by—
- a. Revising the date of the clause;
 - b. Removing paragraph (c)(1) and redesignating paragraphs (c)(2) through (10) as paragraphs (c)(1) through (9); and
 - c. Removing paragraph (e)(1)(vi) and redesignating paragraphs (e)(1)(vii) through (xxiii) as paragraphs (e)(1)(vi) through (xxii).

The revision reads as follows:

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

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

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52.222–17 [Removed and Reserved]

■ 6. Remove and reserve section 52.222–17.

[FR Doc. 2020–07108 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 8, 9, 12, 13, 15, 19, 22, 25, 30, 50, and 52

[FAC 2020–06; FAR Case 2018–007; Item II; Docket No. FAR–2018–0007; Sequence No. 1]

RIN 9000–AN67

Federal Acquisition Regulation: Applicability of Inflation Adjustments of Acquisition-Related Thresholds

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 a section of the National Defense Authorization Act for Fiscal Year 2018 to make inflation adjustments of statutory acquisition-related thresholds applicable to existing contracts and subcontracts in effect on the date of the adjustment that contain the revised clauses in this rulemaking.

DATES: *Effective:* June 5, 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. Please cite FAC 2020–06, FAR Case 2018–007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on June 24, 2019, at 84 FR 29482, to make inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 applicable to existing contracts and subcontracts in effect on the date of the adjustment. This FAR change implements section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91).

Title 41 U.S.C. 1908, Inflation adjustment of acquisition-related dollar thresholds, requires an adjustment every five years of acquisition-related thresholds for inflation using the Consumer Price Index for all urban consumers, except for the Construction

Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds. See FAR 1.109. The last FAR case that raised the thresholds for inflation was 2014–022, a final rule published on July 2, 2015, effective October 1, 2015. The next inflation adjustment under 41 U.S.C. 1908 will be implemented through FAR Case 2019–013 and planned to be effective October 1, 2020. One respondent 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.

B. Analysis of Public Comments

Comment: One respondent supported the proposed rule and suggested to include a list, preferably in table form, of the actual calendar dates of threshold effectiveness.

Response: The Councils agree a table might be a helpful reference tool and will add one at *Acquisition.gov* under <https://www.acquisition.gov/tableofeffectivedatesforMPTandSAT>. The table will only illustrate changes to the micro-purchase and simplified acquisition thresholds, after they are implemented through the rulemaking process.

C. Other Changes

Editorial changes are made to three clauses to change the paragraph heading of “Flowdown” to “Subcontracts” in order to conform to FAR drafting conventions. See FAR clauses 52.203–16, paragraph (d); 52.215–23, paragraph (f); and 52.226–6, paragraph (e).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new solicitation provisions or clauses, or impact any existing provisions or clauses, except for the added references to acquisition-related thresholds in the FAR text.

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