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GSA Office of Governmentwide Policy

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM:

JOSEPH A. NEURAUTER
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

*Virginia A. Heath
FOR*

SUBJECT:

Interim Class Deviation, Federal Acquisition Regulation (FAR)
Clause 52.223-2, Affirmative Procurement of Biobased Products
Under Service and Construction Contracts

1. Background: Section 5 of the February 21, 2012, Presidential Memorandum "Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement" required that contractor reporting on biobased purchases be added to FAR clause 52.223-2. This clause applies to service and construction contracts, unless the contract will not involve the use of biobased items. The FAR final rule became effective on May 18, 2012, and the clause underwent minor revision again on July 26, 2012. Section 5 of the Presidential Memorandum also required the Secretary of Agriculture, in coordination with the Chief Acquisition Officers Council, to develop a reporting template.

The contractor reporting requirements are described in paragraph (c) of FAR clause 52.223-2. Contractors that were awarded contract actions that included the May or July 2012 version of FAR 52.223-2 should have reported for Government Fiscal Year (FY) 2012 no later than October 31, 2012. Reports have been delayed in many cases because the reporting template only became available to contractors a few days before the October 31, 2012 deadline, around the time of Hurricane Sandy. The attached Civilian Agency Acquisition Council letter therefore requested agencies to process class deviations to extend the FY 2012 reporting deadline to December 31, 2012 and to require contractors to use the reporting template at <http://www.biopreferred.gov/FARReporting/FARReporting.xhtml>.

2. Applicability: This memorandum applies to existing contracts and task orders for services or construction that meet all of the following criteria:

- a) That include the May or July 2012 version of FAR clause 52.223-2;
- b) That were awarded between May 18, 2012, and September 30, 2012; and
- c) Where the period of performance began prior to October 1, 2012.

For task orders, contracting officers are reminded to also check the parent indefinite-delivery contract for the May or July 2012 version of FAR clause 52.223-2.

3. Class Deviation: This class deviation is an interim measure until replacement text for FAR 52.223-2 can be developed and approved. Once it becomes available, the replacement clause text will be prescribed for use in new solicitations and contracts for services and construction.

GSA contracting officers are authorized and required to take the following actions, unless the contracting officer has documentation that indicates the contractor has already submitted an annual or end-of-contract report for FY 2012:

- a) Notify contractors that are subject to the biobased reporting requirements of FAR 52.223-2 for Government Fiscal Year 2012 that the reporting deadline has been extended to December 31, 2012.
- b) Direct such contractors to electronically report at <http://www.biopreferred.gov/FARReporting/FARReporting.xhtml>.
- c) Continue to monitor compliance by determining whether the contractor has provided a copy of its biobased purchases report to the contracting officer pursuant to paragraph (c)(1) of FAR clause 52.223-2.


Questions regarding this memorandum should be directed to Mr. Mitchell Gasbarra at (202) 357-5846 or mitchell.gasbarra@gsa.gov.

Attachment



October 29, 2012

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM: LAURA AULETTA 
CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) extending the Biobased Product Reporting Requirement

The clause at FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, requires reporting of biobased products under service and construction contracts, for the previous Government fiscal year, by October 31st of each year during contract performance. The United States Department of Agriculture (USDA) is implementing a web-based portal designed to consolidate government-wide reporting. The web-based portal is scheduled to be available for contractors by October 31, 2012.

To ensure contractor use of the web-based portal for this reporting period, agencies are encouraged to issue a class deviation, in accordance with FAR 1.404, to extend the reporting deadline contained in paragraph (c)(2) of the clause at FAR 52.223-2 from October 31, 2012 to December 31, 2012. Agencies should also notify contractors of the USDA web-based portal at <http://www.biopreferred.gov> for satisfying the reporting requirements of the clause, including the reporting template under "Key Initiatives," or at <http://www.biopreferred.gov/FARReporting/FARReporting.xhtml>.

This CAAC memorandum constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1). Agencies are reminded that FAR 1.404 requires agencies to furnish a copy of each approved class deviation to the FAR Secretariat, General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers at hada.flowers@gsa.gov.

If you have questions or require additional information regarding this memorandum, please contact Marissa Petrusek at (202) 501-0136 or by email at marissa.petrusek@gsa.gov.