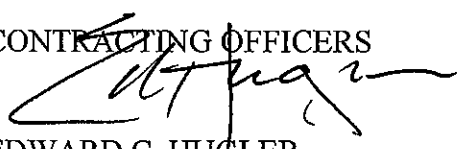




NOV 16 2012

MEMORANDUM FOR CONTRACTING OFFICERS

FROM:  EDWARD C. HUGLER
Deputy Assistant Secretary for Operations,
Senior Procurement Official

SUBJECT: Interim Class Deviation, Federal Acquisition Regulation Clause
52.223-2, Affirmative Procurement of Biobased Products under Service
and Construction Contracts

Section 5 of the President's Memorandum on "Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement" issued on February 21, 2012, requires contractor reporting on biobased purchases be added to Federal Acquisition Regulation (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 revisions again on July 26, 2012. Section 5 of the Presidential Memorandum also requires 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 due to the reporting template only becoming available to contractors a few days before the October 31, 2012 deadline, around the time Hurricane Sandy occurred. 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>.

Department of Labor 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 FY 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.

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.

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.

Questions regarding this memorandum should be directed to Mr. Carl V. Campbell at (202) 693-7246 or Campbell.carl.v@dol.gov.

Attachments

52.223-2 -- Affirmative Procurement of Biobased Products Under Service And Construction Contracts.

As prescribed in 23.406(b), insert the following clause:

Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Jul 2012)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at <http://www.biopreferred.gov>.

(c) In the performance of this contract, the Contractor shall—

(1) Report to the environmental point of contact identified in paragraph (d) of this clause, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30;

(2) Submit this report not later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance; and

(3) Contact the environmental point of contact to obtain the preferred submittal format, if that format is not specified in this contract.

(d) The environmental point of contact for this contract is: _____ [Contracting Officer shall insert full name, phone number, and email address. In addition, the Contracting Officer may include the agency Web site for reporting.]

(End of clause)



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.

**BioPreferred®**

Annual Contractor Reporting of Designated Biobased Product Purchases

FY 2012 Reporting Period: May 18, 2012 to September 30, 2012

FY 2012 Reporting Due Date Extended to: December 31, 2012

Section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246 (the Farm Bill) requires Federal agencies to give a procurement preference to USDA-designated biobased products. In addition, the legislation requires each procuring agency to report annually on the types and dollar values of biobased products their contractors purchase under service and construction contracts. The statutory provisions are codified at 7 U.S.C. 8102.

On February 21, 2012, President Obama issued the Presidential Memorandum, "Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement." In accordance with Section 5 of the Memorandum, the Federal Acquisition Regulatory (FAR) Council amended the FAR to implement the reporting requirement referenced above. The FAR Council published a Biobased Procurements proposed rule in the Federal Register at 76 FR 41179 and a final rule at 77 FR 23365, implementing reporting requirement in the FAR at FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts with an effective date of May 18, 2012. The due date for contractors to report on their biobased products has been extended until December 31, 2012.

Section 5 of the Presidential Memorandum also requires USDA, in consultation with the Chief Acquisition Officers Council, to develop a reporting template to facilitate annual reporting. This website will serve as a temporary reporting solution. A longer term solution is under development for follow-on annual reporting. Note: Contractors should only report biobased products that were purchased under contracts that were awarded between May 18, 2012 and September 30, 2012 and reported to the Federal Procurement Data System "Next Generation (FPDS-NG)". Other contracts will not pass the system validation test. If your contract does not pass the system validation test, see the Frequently Asked Question 12 for assistance.

Step-By-Step Instructions

Frequently Asked Questions

- ☐ I have read the contents of the above FAQ and Step-By-Step Instructions panels.