I. Comment Period Extension

On September 7, 2016 (81 FR 61632), as part of the Commission’s systematic review of all current FTC rules and guides, the Commission published a Request for Comments requesting public comment on the overall costs, benefits, necessity, and regulatory impact of the Safeguards Rule, with a deadline for filing comments of November 7, 2016. On September 12, 2016 (81 FR 63435), the Commission published a Request for Public Comment on its Disposal Rule, with a deadline for comments of November 21, 2016. On October 21, 2016, the American Financial Services Association, Consumer Data Industry Association, and the National Auto Dealer Association, requested that the comment period be extended until November 21, 2016 to coincide with the comment period for Disposal Rule Request for Comments. The requesters explained that the two rules are closely related and that comments on the two rules may overlap. Therefore, having the two comment periods coincide would make it easier for commenters to provide feedback on both rules.

The Commission agrees that allowing additional time for filing comments on the Safeguards Rule would help facilitate the creation of a more complete record. In addition, extending the comment period would not harm consumers because the current Rule will remain in effect during the review process. Therefore, the Commission has decided to extend the comment period to November 21, 2016.

II. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, you must receive it on or before November 21, 2016. Write “Safeguards Rule, 16 CFR 314, Project No. P145407,” on your comment and file your comment online at https://ftcpublic.commentworks.com/ftc/safeguardsrulenprm by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:
DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
48 CFR Parts 5, 6, and 19
[FAR Case 2013–018; Docket No. 2013–0018, Sequence No. 1]
RIN 9000–AM90
Federal Acquisition Regulation: Clarification of Requirement for Justifications for 8(a) Sole Source Contracts
AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).
ACTION: Proposed rule.
SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the guidance for sole-source 8(a) contract awards exceeding $22 million.
DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before January 17, 2017 to be considered in the formation of the final rule.
ADDRESSES: Submit comments in response to FAR Case 2013–018 by any one of the following methods:
• Regulations.gov: http://www.regulations.gov. Submit comments via the Federal eRulemaking portal by entering “FAR Case 2013–018” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2013–018.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2013–018” on your attached document.
• Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd floor, Washington, DC 20405.
Instructions: Please submit comments only and cite FAR Case 2013–018, in all correspondence related to this case. All comments received will be posted without change to http://www.regulations.gov, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).
FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, via email at mahruba.uddowla@gsa, or telephone at 703–605–2868, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2013–018.
SUPPLEMENTARY INFORMATION:
I. Background
DoD, GSA, and NASA are proposing to revise the FAR to further clarify guidance for justifications of 8(a) sole-source contract awards in excess of $22 million. This proposed rule responds to the recommendations made by the Government Accountability Office (GAO) in its report, GAO–13–118, “Slow Start to Implementation of Justifications for 8(a) Sole-Source Contracts.” The GAO report focuses on the revisions made to the FAR to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) (see 77 FR 23369). Section 811 established the requirement that the head of an agency may not award a sole-source 8(a) contract for an amount exceeding $20 million (subsequently updated to $22 million) unless:
• The contracting officer justifies the use of a sole-source contract in writing;
• The justification is approved by the appropriate official designated to approve contract awards for dollar amounts that are comparable to the amount of the sole-source contract; and
• The justification and related documentation are made available to the public in accordance with 10 U.S.C. 2304(f)(1)(C) and (l), and 41 U.S.C. 253(f)(1)(C) and (l) (recodified at 41 U.S.C. 3304(e)(1)(C) and (l)), as applicable.
The GAO report recommended that OFPP, in consultation with the FAR Council, promulgate guidance to clarify the circumstances in which an 8(a) justification is required. As recommended, OFPP and the FAR Council agree to clarify the FAR with guidance that will:
• Clarify whether an 8(a) justification is required for 8(a) contracts that are subject to a pre-existing Competition in Contracting Act of 1984 (Pub. L. 98–369) (CICA) class justification.
• Provide additional information on actions contracting officers should take to comply with the unjustification requirement when the contract value rises above or falls below $22 million between the Small Business Administration’s (SBA’s) acceptance of the contract for negotiation under the 8(a) program and the contract award.
• Clarify whether and under what circumstances a separate sole-source justification is necessary for out-of-scope modifications to 8(a) sole-source contracts.
• This rule does not expand on the requirements of section 811. The intent of the proposed rule is to further clarify the processes and procedures in the FAR to ensure uniform, consistent, and coherent guidance regarding the use of sole-source 8(a) justifications.
II. Discussion and Analysis
The following is a summary of the proposed FAR amendments associated with this rule:
A. Clarify Whether an 8(a) Justification Is Required for 8(a) Contracts That Are Subject to a Pre-Existing CICA Class Justification
The proposed rule will clarify that a justification executed under any other authority cannot be substituted for a sole-source 8(a) justification.