

removing "shall" and adding "must" in its place; and revising paragraph (a)(4) to read as follows:

**44.202-2 Considerations.**

(a) \* \* \*

(4) Has the contractor complied with the prime contract requirements regarding—

(i) Small business subcontracting, including, if applicable, its plan for subcontracting with small, small disadvantaged and women-owned small business concerns (see part 19); and

(ii) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)) (see part 8)?

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

5. In section 52.208-9, revise the section and clause headings, paragraphs (a) and (b), and the second sentence in paragraph (c) to read as follows:

**52.208-9 Contractor Use of Mandatory Sources of Supply or Services.**

\* \* \* \* \*

**Contractor Use of Mandatory Sources of Supply or Services (Date)**

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.

(c) \* \* \* For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. \* \* \*

\* \* \* \* \*

(End of clause)

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

[FAR Case 2000-300]

RIN 9000-A183

**Federal Acquisition Regulation; Truth in Negotiations Act Threshold**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

**DATES:** Interested parties should submit comments in writing on or before September 1, 2000, to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.2000-300@gsa.gov

Please submit comments only and cite FAR case 2000-300 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501-0692. Please cite FAR case 2000-300.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed rule amends FAR 15.403-4 to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995. The proposed increase of \$50,000 is based on escalation of 10.22 percent from 1994 to 2000, calculated using the gross domestic product

deflators from the fiscal year 2001 budget.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts and subcontracts with small entities do not require the submission of cost or pricing data. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000-300), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act applies; however, the proposed changes to the FAR do not significantly change the information collection requirements that have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, under OMB Clearance Number 9000-0045.

**List of Subjects in 48 CFR Part 15**

Government procurement.

Dated: June 26, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose that 48 CFR part 15 be amended as set forth below:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR part 15 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 15.403-4 by revising paragraph (a)(1) to read as follows:

**15.403-4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).**

(a)(1) The contracting officer must obtain cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403-1(b) applies. However, if the contracting officer has sufficient information available to

determine price reasonableness, then the contracting officer should consider requesting a waiver under the exception at 15.403-1(b)(4). The threshold for obtaining cost or pricing data is \$550,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, for existing contracts, the threshold specified in the contract:

- (i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).
- (ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to submit cost or pricing data (but see waivers at 15.403-1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (e.g., a \$200,000 modification resulting from a reduction of \$400,000 and an increase of \$200,000 is a pricing adjustment exceeding \$550,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements

and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if—

- (A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or
- (B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

\* \* \* \* \*

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