

clause that the data have been validated or updated, and provide the date of the validation or update.

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(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2005-31; FAR Case 2008-012; Item II; Docket 2008-0001, Sequence 10]

RIN 9000-AL12

Federal Acquisition Regulation; FAR Case 2008-012, Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 814 of the National Defense Authorization Act for Fiscal Year 2008. Section 814 required the harmonization of the thresholds for cost or pricing data. Specifically, Section 814 required alignment of the threshold for cost or pricing data on non-commercial modifications of commercial items with the Truth In Negotiation Act (TINA) threshold for cost and pricing data.

DATES: *Effective Date:* March 19, 2009.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before May 18, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-31, FAR case 2008-012, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008-012" under the heading "Comment or Submission". Select the link "Send a Comment or Submission"

that corresponds with FAR Case 2008-012. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "FAR Case 2008-012" on your attached document.

- *Fax:* 202-501-4067.
- *Mail:* General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-31, FAR case 2008-012, 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.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501-3221 for clarification of content. Please cite FAC 2005-31, FAR case 2008-012. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The National Defense Authorization Act (NDAA) for Fiscal Year 2008, Section 814, implemented two areas of clarification with regards to the submission of cost or pricing data on non-commercial modifications of commercial items. The first area dealt with clarifying at what point during the life of the contract that the cost or pricing data threshold should be applied. Section 814 of the NDAA for FY 2008 clarified this point by inserting "(at the time of contract award)" after "total price of the contract" language already contained in this FAR section. The second area dealt with the harmonization of the thresholds for cost or pricing data. Section 814 of the NDAA for FY 2008 deleted the current threshold amount (\$500,000) for cost or pricing data relative to non-commercial modifications of commercial items and aligned this threshold with the current Truth In Negotiation Act (TINA) threshold for cost or pricing data of \$650,000. Thus, as the TINA threshold for cost or pricing data is adjusted in the future so will the threshold for obtaining cost or pricing data on non-commercial modifications of commercial items. This case will make the necessary changes within the FAR.

This is not a significant regulatory action and, therefore, was not subject to 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 interim rule is not expected 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.*, since it is harmonizing this FAR section with other parts of the FAR and should actually reduce the administrative burden on contractors by not requiring them to track two separate dollar thresholds for submitting cost or pricing data. It is also increasing this dollar threshold relative to the submittal of cost or pricing data in this situation and thus contractors will experience a reduced administrative burden since they no longer will be required to submit cost or pricing data on this lower threshold amount. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part 15 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.* (FAC 2005-31, FAR case 2008-012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this provision of the National Defense Authorization Act for Fiscal Year 2008, Section 814 went into effect upon enactment, on January 28, 2008. However, pursuant to Pub. L. 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 15 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. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 15.403–1 by revising paragraphs (c)(3)(ii)(B) and (c)(3)(ii)(C) to read as follows:

15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) For acquisitions funded by DoD, NASA, or Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of cost or pricing data provided the total price of all such modifications under a particular contract action does not exceed the greater of the threshold for obtaining cost and pricing data in 15.403–4 or 5 percent of the total price of the contract at the time of contract award.

(C) For acquisitions funded by DoD, NASA, or Coast Guard such modifications of a commercial item are not exempt from the requirement for submission of cost or pricing data on the basis of the exemption provided for at FAR 15.403–1(c)(3) if the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining cost and pricing data in 15.403–4 or 5 percent of the total price of the contract at the time of contract award.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 22

[FAC 2005–31; FAR Case 2008–014; Item III; Docket 2009–0006; Sequence 1]

RIN 9000–AL17

Federal Acquisition Regulation; FAR Case 2008–014, Amendments to Incorporate New Wage Determinations

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to preclude a possible scenario where a contracting officer has to unnecessarily reevaluate proposals already eliminated from a competition.

DATES: *Effective Date:* April 20, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–31, FAR case 2008–014.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Labor (DOL) regulations set forth at 29 CFR 1.6(c)(2) and (3) require that, when contracting by negotiation, the contracting agencies must place modified wage determinations (WDs) into solicitations and contracts if the WDs are received before contract award. FAR 22.404–6(c) establishes that when contracting by negotiation, all written actions modifying WDs received by the contracting agency before contract award, or modifications to general WDs published on the Wage Determination Online (WDOL) before award, shall be incorporated into the solicitation. If an effective WD is received by the contracting officer before award, the contracting officer shall follow the procedures in FAR 22.404–5(c)(3) or (4). FAR 22.404–5(c)(3) covers contracting by negotiation when the closing date has passed; and it requires that a new WD with a changed wage rate must be

furnished as an amendment to all prospective offerors that submitted proposals. There is an apparent inconsistency between this and FAR 15.206(c) which requires that amendments issued after closing shall be issued to all offerors that have not been eliminated from the competition.

This final rule amends the Federal Acquisition Regulation to correct the inconsistency at FAR 22.404–5(c)(3) by changing the language to indicate a contracting officer shall amend solicitations to incorporate new wage determinations and furnish the wage rate information to all offerors that have not been eliminated from the competition, if the closing date for receipt of offers has already passed.

This is not a significant regulatory action and, therefore, was not subject to 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 Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 22 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.* (FAC 2005–31, FAR case 2008–014), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the final rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 22

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 22 as set forth below:

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

■ 1. The authority citation for 48 CFR part 22 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).