

only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

The rule details the information the contracting officer may consider in order to make this determination. The rule further details, when this determination cannot be made, the information which may be requested to determine price reasonableness.

Item V—Limitations on Pass-Through Charges (FAR Case 2008–031) (Interim)

This interim rule implements section 866 of the Duncan Hunter NDAA for Fiscal Year 2009 (Pub. L. 110–417) and section 852 of the John Warner NDAA for Fiscal Year 2007 (Pub. L. 109–364). Section 866 requires the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or of tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, this interim rule includes a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

Item VI—Award Fee Language Revision (FAR Case 2008–008) (Interim)

This interim rule amends the FAR to implement section 814 of the John Warner NDAA of Fiscal Year 2007 (Pub. L. 109–364) and section 867 of the Duncan Hunter NDAA of Fiscal Year 2009 (Pub. L. 110–417). This rule requires agencies to—

(1) Link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;

(2) Clarify that a base fee amount greater than zero may be included in a cost plus award fee type contract at the discretion of the contracting officer;

(3) Prescribe narrative ratings that will be utilized in award fee evaluations;

(4) Prohibit the issuance of award fees for a rating period if the contractor's performance is judged to be below satisfactory;

(5) Conduct a risk and cost benefit analysis and consider the results of the analysis when determining whether to use an award-fee type contract or not;

(6) Include specific content in the award-fee plans; and

(7) Prohibit the rolling over of unearned award fees to subsequent rating periods.

This FAR change will integrate where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

Item VII—National Response Framework (FAR Case 2009–003)

This final rule amends the FAR part 18 to remove all references to the National Response Plan (NRP) and Incidents of National Significance. In January 2008, FEMA, a component within the DHS, reissued the NRP as the National Response Framework (NRF). With the reissuance, the term “Incidents of National Significance” was eliminated. The changes became effective on March 22, 2008. Both the NRP and the term “Incidents of National Significance” are now obsolete.

This rule is informational and represents minor updates for consistency with FEMA references.

FEMA provides a link at their website for Frequently Asked Questions that explain the rationale for and the changes to the NRF.

This rule does not have a significant impact on Government or any automated systems.

Item VIII—Technical Amendments

Editorial changes are made at FAR 5.102, 52.213–4, and 52.244–6.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-37 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-37 is effective October 14, 2009, except for Item VII, which is effective November 13, 2009.

Dated: October 5, 2009.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: October 2, 2009.

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: October 6, 2009.

Leigh Pomponio,

Procurement Analyst, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, 10, 13, 18, 26, and 52

[FAC 2005–37; FAR Case 2008–035; Item I; Docket 2009–0033, Sequence 1]

RIN 9000–AL30

Federal Acquisition Regulation; FAR Case 2008–035, Registry of Disaster Response Contractors

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) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 697, Registry of Disaster Response Contractors (Pub. L. 109–295), the Department of Homeland Security (DHS) Appropriations Act, 2007 (6 U.S.C. 796). The Act requires that the Administrator of the Federal Emergency Management Agency (FEMA), a component of DHS, establish and maintain a registry of contractors, which are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. In addition, the Act requires contracting officers to consult the Registry during market research and acquisition planning.

DATES: *Effective Date:* October 14, 2009.

Comment Date: Interested parties should submit written comments to the

Regulatory Secretariat on or before December 14, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–37, FAR case 2008–035, by any of the following methods:

• Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2008–035” into the field “Keyword”. Select the link that corresponds with FAR Case 2008–035. Follow the instructions provided to submit your comment. Please include your name, company name (if any), and “FAR Case 2008–035” 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 2005–37, FAR case 2008–035, 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: For clarification of content, contact Mr. Edward Loeb, Director, Contract Policy Division at (202) 501–0650. For more information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR Case 2008–035.

SUPPLEMENTARY INFORMATION:

A. Background

The Disaster Response Registry includes business information consistent with the data that is currently required in the Central Contractor Registration (CCR) with two additional categories added to reflect the area served by the business, and the bonding level of the business concern. The CCR has been updated to include these changes. In addition, the FEMA website has been updated with a link to the Registry search feature at the CCR website. Contracting officers will be required to consult this Registry during market research and acquisition planning. The Registry covers domestic projects. Foreign contractors may register.

The proposed FAR revisions include the following:

(1) Addition of language in FAR 2.101 to provide a definition of the term “Disaster Response Registry”.

(2) Redesignating FAR section 4.1104 (Solicitation provision and contract

clauses) as section 4.1105, and adding a new FAR section 4.1104 that requires contracting officers to consult the Registry at www.ccr.gov.

(3) Adding a paragraph (v) to FAR section 7.103 that requires agency heads or designees to prescribe procedures which ensure that contracting officers consult the Registry as a part of acquisition planning for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas (defined in FAR part 2).

(4) Including a reference to 6 U.S.C. 796 in FAR 10.000; making a technical correction of an editorial nature to FAR 10.001(a)(2)(v); and adding language to require agencies, in the conduct of their market research, to identify prospective contractors registered in the Registry when researching sources for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief supplies and services.

(5) Adding the requirement in FAR 18.102 for contracting officers to consult the Registry for the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas.

(6) Redesignating FAR 26.205 as 26.206 and adding a new FAR 26.205, which states that contracting officers shall consult the Registry. This section informs contracting officers how to locate vendors on the Registry.

(7) Making conforming amendments in FAR 13.201 and to the prefatory text in FAR 52.204–7 and in FAR 52.226–3 through 52.226–5.

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 is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this interim 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 the rule does not impose any additional requirements on small businesses; registration in the Registry is voluntary. Two additional categories for the Registry content were added to the CCR to allow businesses to identify the area served by the business and the bonding level of the business concern.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities

concerning the affected FAR parts 2, 4, 7, 10, 13, 18, 26, and 52 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 2005–37, FAR Case 2008–035), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not contain any 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 the Department of Homeland Security Appropriations Act, 2007 (6 U.S.C. 796), became effective upon enactment. The enactment date is October 4, 2006. 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 Parts 2, 4, 7, 10, 13, 18, 26, and 52

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 7, 10, 13, 18, 26, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 7, 10, 13, 18, 26, and 52 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).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition “Disaster Response Registry” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Disaster Response Registry means a voluntary registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction,

and other disaster or emergency relief activities established in accordance with 6 U.S.C. 796, Registry of Disaster Response Contractors. The Registry contains information on contractors who are willing to perform disaster or emergency relief activities within the United States and its outlying areas. The Registry is located at www.ccr.gov and alternately through the FEMA website at <http://www.fema.gov/business/index.shtm>. (See 26.205).

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PART 4—ADMINISTRATIVE MATTERS

4.1104 [Redesignated as 4.1105]

■ 3. Redesignate section “4.1104” as section “4.1105”, and add a new section “4.1104” to read as follows:

4.1104 Disaster Response Registry.

Contracting officers shall consult the Disaster Response Registry at www.ccr.gov when contracting for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.103 by adding paragraph (v) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(v) Ensuring that contracting officers consult the Disaster Response Registry at www.ccr.gov as a part of acquisition planning for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

PART 10—MARKET RESEARCH

■ 5. Amend section 10.000 by revising the second sentence to read as follows:

10.000 Scope of part.

* * * This part implements the requirements of 41 U.S.C. 253a(a)(1), 41 U.S.C. 264b, 10 U.S.C. 2377, and 6 U.S.C. 796.

■ 6. Amend section 10.001 by revising paragraph (a)(2)(v) to read as follows:

10.001 Policy.

- (a) * * *
- (2) * * *

(v) On an ongoing basis, and to the maximum extent practicable, take advantage of commercially available market research methods in order to identify effectively the capabilities, of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the

requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. (See 26.205).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.201 [Amended]

■ 7. Amend section 13.201 by removing from paragraph (d) “4.1104” and adding “4.1105” in its place.

PART 18—EMERGENCY ACQUISITIONS

■ 8. Revise section 18.102 to read as follows:

18.102 Central contractor registration.

Contractors are not required to be registered in the Central Contractor Registration (CCR) for contracts awarded to support unusual and compelling needs or emergency acquisitions. (See 4.1102). However, contractors are required to register with CCR in order to gain access to the Disaster Response Registry. Contracting officers shall consult the Disaster Response Registry at www.ccr.gov to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.205 [Redesignated as 26.206]

■ 9. Redesignate section “26.205” as section “26.206” and add a new section “26.205” to read as follows:

26.205 Disaster Response Registry.

(a) Contracting officers shall consult the Disaster Response Registry at www.ccr.gov to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas.

(b) A list of prospective vendors voluntarily participating in the Disaster Response Registry can be retrieved using the CCR Search tool on the CCR webpage. These vendors may be identified by selecting the criteria for “Disaster Response Contractors”. Contractors are required to register with

CCR in order to gain access to the Disaster Response Registry.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–7 [Amended]

■ 10. Amend section 52.204–7 by removing from the introductory paragraph “4.1104” and adding “4.1105” in its place.

52.226–3 [Amended]

■ 11. Amend section 52.226–3 by removing from the introductory paragraph “26.205(a)” and adding “26.206(a)” in its place.

52.226–4 [Amended]

■ 12. Amend section 52.226–4 by removing from the introductory paragraph “26.205(b)” and adding “26.206(b)” in its place.

52.226–5 [Amended]

■ 13. Amend section 52.226–5 by removing from the introductory paragraph “26.205(c)” and adding “26.206(c)” in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 2005–37; FAR Case 2007–008; Item II; Docket 2007–0001, Sequence 14]

RIN 9000–AK90

Federal Acquisition Regulation; FAR Case 2007–008, Limiting Length of Noncompetitive Contracts in “Unusual and Compelling Urgency” Circumstances

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) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 862 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and Office of Federal Procurement Policy (OFPP)