

many GAO audits of small business contractors include contractor employee interviews. This Act is designed to cover those incidents in which the contractor does not voluntarily make the contractor employees available for interviews. Therefore, it is not anticipated that interviewing any current employee regarding such contract transactions will have a significant impact.

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.*

List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 12 and 52, which was published in the **Federal Register** at 74 FR 14649 on March 31, 2009, is adopted as a final rule without change.

[FR Doc. E9-24568 Filed 10-13-09; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2005-37; FAR Case 2008-034; Item IV; Docket 2009-0035, Sequence 1]

RIN 9000-AL44

Federal Acquisition Regulation; FAR Case 2008-034, Use of Commercial Services Item Authority

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 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Section 868 provides that purchases of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace may only be considered commercial items for the purposes of the FAR if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

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 2008-034, by any of the following methods:

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

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008-034" into the field "Keyword". Select the link that corresponds with FAR Case 2008-034. Follow the instructions provided to submit your comment. Please include your name, company name (if any), and "FAR Case 2008-034" 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 2008-034, 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 2005-37, FAR case 2008-034. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) states that the FAR shall be amended

with respect to the procurement of commercial services, specifically services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. These services may be considered commercial items 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 such services. The rule details the information the contracting officer may consider in order to make this determination.

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.*, because this interim rule primarily impacts actions required on the part of the Government by requiring a new written determination by the contracting officer. Since the current 15.403-3(a)(1) provides for contracting officers to obtain the information necessary to evaluate price reasonableness, this interim rule places no additional requirements on contractors. 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 2005-37, FAR case 2008-034), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0013.

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 rule implements section 868 of the Duncan Hunter National Defense Authorization Act (Pub. L. 110-417), which was signed on October 14, 2008, and requires amending the FAR not later than 180 days after the date of enactment of the Act. However, pursuant to Public Law 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: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ 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 redesignating paragraphs (c)(3)(ii) and (c)(3)(iii) as (c)(3)(iii) and (c)(3)(iv), respectively, and adding a new paragraph (c)(3)(ii) 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) In accordance with section 868 of Pub. L. 110-417:

(A) When purchasing services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, they may be considered commercial items (thus meeting the purpose of 41 U.S.C 254b and 10 U.S.C. 2306a for truth in negotiations) only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

(B) In order to make this determination, the contracting officer may request the offeror to submit prices paid for the same or similar commercial items under comparable terms and

conditions by both Government and commercial customers; and

(C) If the contracting officer determines that the information described in paragraph (c)(3)(ii)(B) of this section is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs and overhead rates may be requested.

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■ 3. Amend section 15.403-3 by adding paragraph (c)(3) to read as follows:

15.403-3 Requiring information other than cost or pricing data.

* * * * *

(c) * * *

(3) For services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, see 15.403-1(c)(3)(ii).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 31, and 52

[FAC 2005-37; FAR Case 2008-031; Item V; Docket 2009-0034, Sequence 1]

RIN 9000-AL27

Federal Acquisition Regulation; FAR Case 2008-031, Limitations on Pass-Through Charges

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 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 which applies to Executive Agencies other than DoD. The DoD is subject to section 852 of the John Warner NDAA for FY 2007 which is also being implemented in this interim rule. Section 866 requires the Councils

to amend the FAR and section 852 requires the Secretary of Defense to prescribe regulations 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. Since both statutory provisions address excessive pass-through charges and the multiple tiering of subcontracting, the Councils decided to combine both provisions in this FAR rule.

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 2008-031, by any of the following methods:

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

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008-031" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case 2008-031. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "FAR Case 2008-031" 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 2008-031, 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 Chambers, Procurement Analyst, at (202) 501-3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-37, FAR case 2008-031.

SUPPLEMENTARY INFORMATION: