(b) * * *

Qualifying offeror, as used in 13.106–1 and 15.304, means an offeror that is determined to be a responsible source, submits a technically acceptable proposal that conforms to the requirements of the solicitation, and the contracting officer has no reason to believe would be likely to offer other than fair and reasonable pricing (10 U.S.C. 2305(a)(3)(D)).

* * * * *

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

3. Amend section 4.1005–2 by revising paragraph (a)(2) to read as follows:

4.1005–2 Exceptions.

(a) * * *

(2) Indefinite-delivery indefinite-quantity (IDIQ) and requirements contracts. (i) IDIQ and requirements contracts may omit the quantity at the line item level for the base award provided that the total contract minimum and maximum, or the estimate, respectively, is stated.

(ii) Multiple-award IDIQ contracts awarded using the procedures at 13.106–1(a)(2)(iv)(A) or 15.304(c)(1)(ii)(A) may omit price or cost at the line item or subline item level for the contract award, provided that the total contract minimum and maximum is stated (see 16.504(a)(1)).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

4. Amend section 13.106–1 by revising paragraph (a)(2) to read as follows:

13.106–1 Soliciting competition.

(a) * * *

(2)(i) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, e.g., past performance and quality).

(ii) Contracting officers are encouraged to use best value.

(iii) Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(iv) In accordance with 10 U.S.C. 2305(a)(3), for DoD, NASA, and the Coast Guard—

(A) The contracting officer may choose not to include price or cost as an evaluation factor for award when a solicitation—

(1) Has an estimated value above the simplified acquisition threshold;

(2) Will result in multiple-award contracts (see subpart 16.5) that are for the same or similar services; and

(3) States that the Government intends to make an award to each and all qualifying offerors (see 2.101).

(B) If the contracting officer chooses not to include price or cost as an evaluation factor for the contract award, in accordance with paragraph (a)(2)(iv)(A) of this section, the contracting officer shall consider price or cost as one of the factors in the selection decision for each order placed under the contract.

(C) The exception in paragraph (a)(2)(iv)(A) of this section shall not apply to solicitations for multiple-award contracts that provide for sole source orders pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

5. Amend section 15.304 by revising paragraph (c)(1) and paragraph (e) introductory text to read as follows:

15.304 Evaluation factors and significant subfactors.

* * * * *

(c) * * *

(1)(i) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 3306(c)(1)(B)) (also see part 36 for architect-engineer contracts), subject to the exception listed in paragraph (c)(1)(ii)(A) of this section for use by DoD, NASA, and the Coast Guard.

(ii) Multiple-award IDIQ contracts (see subpart 16.5) that are for the same or similar services; and

(iii) Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(iv) In accordance with 10 U.S.C. 2305(a)(3), for DoD, NASA, and the Coast Guard—

(A) The contracting officer may choose not to include price or cost as an evaluation factor for award when a solicitation—

(1) Has an estimated value above the simplified acquisition threshold;

(2) Will result in multiple-award contracts (see subpart 16.5) that are for the same or similar services; and

(3) States that the Government intends to make an award to each and all qualifying offerors (see 2.101).

(B) If the contracting officer chooses not to include price or cost as an evaluation factor for the contract award, in accordance with paragraph (a)(2)(iv)(A) of this section, the contracting officer shall consider price or cost as one of the factors in the selection decision for each order placed under the contract.

(C) The exception in paragraph (c)(1)(ii)(A) of this section shall not apply to solicitations for multiple-award contracts that provide for sole source orders pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

* * * * *

PART 16—TYPES OF CONTRACTS

16.504 [Amended]

6. Amend section 16.504 by removing from paragraph (c)(1)(ii)(B)(5) “is less than the simplified” and adding “is at or below the simplified” in its place.

7. Amend section 16.505 by adding paragraph (b)(2)(ii)(G); and removing paragraph (b)(2)(iii)(B)(10) “(b)(2)(i)(A) through (E) of” and adding “(b)(2)(i)(A) through (E) and (G) of” in its place.

The addition reads as follows:

16.505 Ordering.

* * * * *

(b) * * *

(2) * * *

(i) * * *

For DoD, NASA, and the Coast Guard, the order satisfies one of the exceptions permitting the use of other than full and open competition listed in 6.302 (10 U.S.C. 2304(b)(5)). The public interest exception shall not be used unless Congress is notified in accordance with 10 U.S.C. 2304(c)(7).

* * * * *

[FR Doc. 2020–12764 Filed 7–1–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, 30, and 52

[FAC 2020–07; FAR Case 2018–005; Item IV; Docket No. FAR–2018–0006, Sequence No. 1]

RIN 9000–AN69

Federal Acquisition Regulation: Modifications to Cost or Pricing Data Requirements

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).
ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 to increase the threshold for requiring certified cost or pricing data. The changes are not applicable to contracts at or below the simplified acquisition threshold.


FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or zenaida.delgado@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARRegSec@gsa.gov. Please cite FAC 2020–07, FAR Case 2018–005.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule on October 2, 2019, at 84 FR 52428, to increase the threshold for requesting certified cost or pricing data from $750,000 to $2 million for contracts entered into after June 30, 2018. The threshold for Cost Accounting Standards applicability is required by 41 U.S.C. 1502(b)(1)(B) to be the same threshold as the one for requesting certified cost or pricing data. This FAR change implements section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91) that amends 10 U.S.C. 2306a and 41 U.S.C. 3502. Cost or Pricing Data: Truth in Negotiations, 10 U.S.C. 2306a, and Required cost or pricing data and certification, 41 U.S.C. 3502, require that the Government obtain certified cost or pricing data for certain contract actions listed at 15.403–4(a)(1), such as negotiated contracts, certain subcontracts and certain contract modifications. Two respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Changes

There are no changes as a result of comments on the proposed rule.

B. Analysis of Public Comments

Comment: One respondent opposed the proposed rule and believed it would result in higher prices to the Government.

Response: This FAR change is required to implement section 811 of the NDAA for FY 2018 that amends 10 U.S.C. 2306a and 41 U.S.C. 3502.

Comment: One respondent suggested revision of FAR 15.403–4(a)(3) to reflect the $2 million threshold for both prime contracts and subcontracts entered into on and after July 1, 2018, to ensure consistency across the entire Truth in Negotiations Act certification process.

Response: The Councils cannot accept the suggestion because it is not consistent with the statute being implemented.

C. Other Changes

Some changes included in the proposed rule are no longer necessary because of publication of the final rule under FAR Case 2018–007, FAC 2020–006, on May 6, 2020, effective June 5, 2020.

III. Expected Impact of the Final Rule and Proposed Cost Savings

DoD, GSA, and NASA have performed a regulatory cost analysis on this rule. The following is a summary of the estimated public and Government cost savings. This rule will impact large and small businesses which currently compete on solicitations issued using FAR part 15 negotiation procedures and are valued between $750,000 and $2 million as these firms will no longer be required to submit certified cost or pricing data between those amounts. In addition, because of the comparable increase in the cost accounting standards threshold, fewer contractors will be required to comply with FAR clauses that implement the cost accounting standards. The following is a summary of the estimated cost savings calculated in 2016 dollars at a 7-percent discount rate and in perpetuity:

<table>
<thead>
<tr>
<th>Summary</th>
<th>Public</th>
<th>Government</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Present Value Cost Savings</td>
<td>−$588,988,385</td>
<td>−$90,669,628</td>
<td>−$679,658,013</td>
</tr>
<tr>
<td>Annualized Cost Savings</td>
<td>−41,229,187</td>
<td>−6,346,874</td>
<td>−47,576,061</td>
</tr>
<tr>
<td>Annualized Value Cost Savings as of Year 1 is 2020</td>
<td>−31,453,549</td>
<td>−4,841,999</td>
<td>−36,295,548</td>
</tr>
</tbody>
</table>

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at www.regulations.gov, search for “FAR Case 2018–005,” click “Open Docket,” and view “Supporting Documents.”

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

The changes are not applicable to contracts at or below the simplified acquisition threshold or to contracts for the acquisition of commercial items.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This final rule is considered to be an E.O. 13771 deregulatory action. The total annualized value of the cost savings is $36,295,548.
the threshold for submission of certified cost or pricing data at 15.403–4(a)(1); or
(ii) Upon request of a contractor in connection with a prime contract entered into before July 1, 2018, the
contracting officer shall modify the contract without requiring consideration to replace clause 52.214–28,
Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, with its Alternate I.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

3. Amend section 15.403–4 by—
   a. Revising the third sentence of paragraph (a)(1) introductory text;
   b. Revising the second sentence of paragraph (a)(1)(iii) introductory text;
   and
   c. Adding paragraph (a)(3).

The revisions and addition read as follows:


(a)(1) * * * The threshold for obtaining certified cost or pricing data is $750,000 for prime contracts awarded before July 1, 2018, and $2 million for prime contracts awarded on or after July 1, 2018. * * *

* * * * *

(iii) * * * Price adjustment amounts must consider both increases and decreases (e.g., a $500,000 modification resulting from a reduction of $1,500,000 and an increase of $1,000,000 is a $2,500,000 pricing adjustment exceeding the $2,000,000 threshold).

* * * * *

(3) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract, without requiring consideration, to reflect a $2 million threshold for obtaining certified cost or pricing data on subcontracts entered on and after July 1, 2018. See 15.408.

* * * * *

4. Amend section 15.408 by revising paragraphs (d) and (e) to read as follows:

15.408 Solicitation provisions and contract clauses.

* * * * *

(d) Subcontractor Certified Cost or Pricing Data. The contracting officer shall—

1. Insert the clause at 52.215–12, Subcontractor Certified Cost or Pricing Data, in solicitations and contracts.
when the clause prescribed in paragraph (b) of this section is included; or
(2) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration, to replace clause 52.215–12, Subcontractor Certified Cost or Pricing Data, with its Alternate I.

(e) Subcontractor Certified Cost or Pricing Data—Modifications. The contracting officer shall—
(1) Insert the clause at 52.215–13, Subcontractor Certified Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (c) of this section is included; or
(2) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration, to replace clause 52.215–13, Subcontractor Certified Cost or Pricing Data—Modifications, with its Alternate I.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

30.201–4 [Amended]
5. Amend section 30.201–4, in paragraph (b)(1), by removing “$750,000” and adding “$2 million” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 52.214–28 by—
(a) Removing from the clause prescription “14.201–7(c)” and adding “14.201–7(c)(1)[i]” in its place; and
(b) Adding Alternate I.

The addition reads as follows:

52.214–28 Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding (May 2020)

* * * * *

Alternate I (AUG 20). As prescribed in 14.201–7(c)(1)[i], substitute the following paragraph (b) in place of paragraph (b) of the basic clause:

(b) Unless an exception under FAR 15.403–1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor’s proposal in accordance with FAR 15.408, Table 15–2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—
(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed $750,000; or
(2) Before awarding any subcontract expected to exceed $2 million on or after July 1, 2018, involving a pricing adjustment expected to exceed $2 million.

7. Amend section 52.215–12 by—
(a) Removing from the clause prescription “15.408(d)” and adding “15.408(d)[1]” in its place; and
(b) Adding Alternate I.

The addition reads as follows:

52.215–12 Subcontractor Certified Cost or Pricing Data.

* * * * *

Subcontractor Certified Cost or Pricing Data (May 2020)

* * * * *

Alternate I (AUG 20). As prescribed in 15.408(d)[2], substitute the following paragraph (a) in place of paragraph (a) of the basic clause:

(a) Unless an exception under FAR 15.403–1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15–2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—
(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed $750,000; or
(2) Before awarding any subcontract expected to exceed $2 million.

The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds $2 million.

52.220–2 [Amended]

9. Amend section 52.220–2 by removing from the clause prescription “30.201–4(a)” and adding “30.201–4(a)[1]” in its place.

52.220–4 [Amended]

10. Amend section 52.220–4 by removing from the clause prescription “30.201–4(c)” and adding “30.201–4(c)[1]” in its place.

52.220–5 [Amended]

11. Amend section 52.220–5 by removing from the clause prescription “30.201–4(e)” and adding “30.201–4(e)[1]” in its place.

[FR Doc. 2020–12765 Filed 7–1–20; 8:45 am]
BILLING CODE 6820– EP–P