

Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). This rule provides unrestricted competition in acquisitions of landscaping and pest control services.

#### **Item V—Nonavailable Articles—Policy (FAR Case 2003–021)**

This final rule addresses Congressional concerns regarding appropriate use of the list of domestically nonavailable items at FAR 25.104(a). This final rule primarily impacts contracting officers who purchase items that are on the list, or items that contain an item on the list as a significant component. The final rule clarifies that being on the list does not mean that an item is completely nonavailable from U.S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the final rule emphasizes the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list.

#### **Item VI—Cost Accounting Standards Administration (FAR Case 1999–025)**

This final rule amends the FAR by revising Part 30, Cost Accounting Standards Administration, and the related contract clause at FAR 52.230–6, Administration of Cost Accounting Standards. In addition, a new contract clause is added at FAR 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost impact on contract and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. The case was initiated by OUSD(AT&L)DPAP to address the CAS cost-impact process. The rule is of particular importance to contracting officers and contractors who negotiate and administer CAS-covered contracts and subcontracts in accordance with FAR Part 30.

#### **Item VII—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003–024) (Interim)**

This interim rule affects contractors that have cost-reimbursement contracts with the Department of Defense, Coast Guard, or NASA. It amends FAR 44.201–2, Advance Notification Requirements, under cost-reimbursement contracts so that contractors that maintain a purchasing system approved by the contracting

officer for the contract do not have to notify the agency before the award of any—

- Cost-plus-fixed-fee subcontract; or
- Fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

This rule implements section 842 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

#### **Item VIII—Use of FAR Clause 52.244–6, Subcontracts for Commercial Items (FAR Case 2002–021)**

This final rule revises FAR 44.403 by requiring the use of the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items. The revised clause prescription clarifies to contracting officers who acquire construction that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not for the acquisition of commercial items. This rule does not make any changes to existing OFPP guidance addressing the applicability of FAR Part 12 to construction acquisitions.

#### **Item IX—Technical Amendments**

Editorial changes are made at FAR 28.203–3(d), 31.101, 42.203, and 52.225–13(b) in order to update references.

Dated: February 24, 2005.

**Rodney P. Lantier,**

*Director, Contract Policy Division.*

#### **Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2005-01 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 2005-01 is effective March 9, 2005, except for Items III, V, and VI, which are effective April 8, 2005.

Dated: February 24, 2005.

**Deidre A. Lee,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: February 22, 2005.

**Pat Brooks,**

*Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.*

Dated: February 17, 2005.

**Tom Luedtke,**

*Deputy Chief Acquisition Officer, National Aeronautics and Space Administration.*

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## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 2, 8, 16, and 36**

[FAC 2005–01; FAR Case 2004–001; Item I]

RIN 9000–AK15

#### **Federal Acquisition Regulation; Improvements in Contracting for Architect-Engineer Services**

**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 1427(b) of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136).

**DATES:** *Effective Date:* March 9, 2005.

*Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–01, FAR case 2004–001 by any of the following methods:

• Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

• E-mail: [farcase.2004-001@gsa.gov](mailto:farcase.2004-001@gsa.gov). Include FAC 2005-01, FAR case 2004-001 in the subject line of the message.

• Fax: 202-501-4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

**Instructions:** Please submit comments only and cite FAC 2005-01, FAR case 2004-001, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208-4949. Please cite FAC 2005-01, FAR case 2004-001.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

Section 1427 of the Services Acquisition Reform Act of 2003 prohibits architect-engineer services from being offered under multiple award Federal Supply Schedules or under Governmentwide task and delivery order contracts unless the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal District, or outlying area, in which the services are to be performed and are awarded using the procedures of the Brooks Architect-Engineer Act.

FAR Subpart 2.1, Definitions, is revised to correct the statutory citation for architect-engineer contracts.

FAR 8.403(c) is added to clarify that agencies whose requirements substantially, or to a dominant extent, specify performance of architect-engineer services (as defined in 2.101) must use the procedures at FAR Subpart 36.6.

A new paragraph 16.505(a)(8) is added to stipulate that orders that substantially, or to a dominant extent, specify the performance of architect-engineer services (as defined in 2.101), must be issued using the procedures at FAR Subpart 36.6 and such services require the direct supervision of a professional architect or engineer who is licensed, registered, or certified in the State, Federal District or outlying area where the services are to be performed.

FAR 36.600 is revised to make the policies and procedures in FAR Subpart 36.6 applicable to orders for architect-

engineer services issued under FAR 16.505.

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 the interim rule clarifies an already existing requirement that architecture and engineering services be procured using the procedures at FAR Subpart 36.6.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 8, 16, and 36 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 2005-01, FAR case 2004-001, 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. 3501, *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 Federal agencies require clear guidance to avoid inadvertently violating the requirements of the Brooks Architect-Engineers Act and section 1427(b) of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108-136.) Section 1427(b) went into effect November 24, 2003.

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 Parts 2, 8, 16, and 36**

Government procurement.

Dated: February 24, 2005

**Rodney P. Lantier,**

*Director, Contract Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 8, 16, and 36 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 8, 16, and 36 is revised 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**

### **2.101 [Amended]**

■ 2. Amend section 2.101 in paragraph (b) in the definition “Architect-engineer services” by removing “40 U.S.C. 541” and adding “40 U.S.C. 1102” in its place.

## **PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

■ 3. Amend section 8.403 by adding paragraph (c) to read as follows:

### **8.403 Applicability.**

\* \* \* \* \*

(c) In accordance with section 1427(b) of Public Law 108-136, for requirements that substantially or to a dominant extent specify performance of architect-engineer services (as defined in 2.101), agencies—

(1) Shall use the procedures at Subpart 36.6; and

(2) Shall not place orders for such requirements under a Federal Supply Schedule.

## **PART 16—TYPES OF CONTRACTS**

■ 4. Amend section 16.505 by redesignating paragraph (a)(8) as (a)(9) and adding a new paragraph (a)(8) to read as follows:

### **16.505 Ordering.**

(a) \* \* \*

(8) In accordance with section 1427(b) of Public Law 108-136, orders placed under multi-agency contracts for services that substantially or to a dominant extent specify performance of architect-engineer services, as defined in 2.101, shall—

(i) Be awarded using the procedures at Subpart 36.6; and

(ii) Require the direct supervision of a professional architect or engineer licensed, registered or certified in the State, Federal District, or outlying area, in which the services are to be performed.

\* \* \* \* \*

**PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

■ 5. Revise section 36.600 to read as follows:

**36.600 Scope of Subpart.**

This subpart prescribes policies and procedures applicable to the acquisition of architect-engineer services, including orders for architect-engineer services under multi-agency contracts (see 16.505(a)(8)).

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 6**

[FAC 2005-01; FAR Case 2004-037; Item II]

RIN 9000-AK12

**Federal Acquisition Regulation; Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard**

**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 increase the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard, as a result of Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, which amends 10 U.S.C. 2304(f)(1)(B) by striking \$50,000,000 both places it appears and inserting \$75,000,000 in its place. In addition, the FAR is amended by replacing the outdated reference to "grade GS-16" with "a grade above GS-15."

**DATES:** *Effective Date:* March 9, 2005.

*Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-01, FAR case 2004-037, by any of the following methods:

• Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

• E-mail: [farcase.2004-037@gsa.gov](mailto:farcase.2004-037@gsa.gov). Include FAC 2005-01, FAR case 2004-037, in the subject line of the message.

• Fax: 202-501-4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005-01, FAR case 2004-037, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949. Please cite FAC 2005-01, FAR case 2004-037.

**SUPPLEMENTARY INFORMATION:****A. Background**

This interim rule implements Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, which amends 10 U.S.C. 2304(f)(1)(B) by striking \$50,000,000 both places it appears and inserting \$75,000,000.

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 the rule does not impose any costs on either small or large businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part 6 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 2005-01, FAR case 2004-037), 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. 3501, *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 rule implements Section 815 of Public Law 108-375, which was effective upon enactment (October 28, 2004). 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 6**

Government procurement.

Dated: February 24, 2005

**Rodney P. Lantier,**

*Director, Contract Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 6 as set forth below:

**PART 6—COMPETITION REQUIREMENTS**

■ 1. The authority citation for 48 CFR part 6 is revised 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 6.304 by revising the introductory text of paragraph (a)(3), paragraph (a)(3)(ii), and the first sentence of paragraph (a)(4) to read as follows:

**6.304 Approval of the justification.**

(a) \* \* \*

(3) For a proposed contract over \$10,000,000, but not exceeding \$50,000,000, or, for DoD, NASA, and the Coast Guard, not exceeding \$75,000,000, by the head of the procuring activity, or a designee who—

\* \* \* \* \*

(ii) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule).