

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: July 3, 2007.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

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## DEPARTMENT OF HOMELAND SECURITY

### 48 CFR Part 3036

[Docket No. DHS-2007-0024]

RIN 1601-AA44

#### Department of Homeland Security Acquisition Regulation; One-Step Turnkey Design-Build Contracts for United States Coast Guard (HSAR Case 2007-002)

**AGENCY:** Department of Homeland Security.

**ACTION:** Proposed rule with requests for comments.

**SUMMARY:** The Department of Homeland Security (DHS) is proposing to amend the Department of Homeland Security Acquisition Regulation (HSAR) to incorporate the delegation of turnkey design-build authority from the Secretary of Homeland Security to the United States Coast Guard. The rule is necessary to implement changes resulting from section 205 of Public Law 109-241.

**DATES:** Submit comments by August 13, 2007.

**ADDRESSES:** You may submit comments, identified by Docket Number DHS-2007-0024, by one of the following methods:

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

- *E-mail:* [Kathy.Strouss@dhs.gov](mailto:Kathy.Strouss@dhs.gov). Include the docket number in the subject line of the message.

- *Mail:* Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, ATTN: Kathy Strouss, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** Kathy Strouss, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy, (202) 447-5300.

#### SUPPLEMENTARY INFORMATION:

I. Public Participation

II. Background and Purpose

#### III. Discussion of Proposed Rule

##### IV. Regulatory Analyses

- Executive Order 12866 Assessment
- Regulatory Flexibility Act
- Unfunded Mandates Reform Act
- Paperwork Reduction Act
- Executive Order 13132: Federalism
- Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
- Executive Order 12988: Civil Justice Reform
- Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- Executive Order 13211: Energy Effects
- National Environmental Policy Act

#### I. Public Participation

DHS invites interested persons to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism affects that might result from this proposed rule. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

You may submit your comments and material by one of the methods specified in the **ADDRESSES** section. Please submit your comments and material by only one means. If you submit them by mail, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing. If you want DHS to acknowledge receipt of comments by mail, include with your comments a self-addressed, stamped postcard that includes the docket number for this rulemaking. We will stamp the date on the postcard and mail it to you.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

#### II. Background and Purpose

Currently, the Federal Acquisition Regulation (FAR) provides for Two-Phase Design-Build Selection Procedures. These procedures are used

when the Government determines it is appropriate to combine design and construction in a single contract with one contractor. See 48 CFR 36.3, "Two-Phase Design-Build Selection Procedures." Since the FAR does not allow for consideration of cost or price related factors until the second phase, the Two-Phase procedures require proposal evaluation at two separate points. See 48 CFR 36.303-2(b)). The existing two-phase selection procedures, whether one solicitation for both phases or two solicitations issued sequentially, require evaluation of technical approach and technical qualifications in phase one and evaluation of technical factors (such as design concepts or proposed solutions and price) in phase two. These procedures result in substantial completion time for both interested firms and the Government.

The proposed rule amends the HSAR to allow for one-step turnkey design-build contracting for United States Coast Guard facilities. This one-step design-build contracting method results in a single contractor for both design and construction services. The one-step turnkey selection procedures for design-build consist of a single price and technical evaluation for a single, firm fixed-price contract with one contractor. This approach, which works well for less complex facilities' construction projects requiring little design, provides for shortened procurement and execution stages when compared to the existing two-phase selection procedures.

#### III. Discussion of Proposed Rule

The proposed rule adds a new section and subpart to the HSAR at 48 CFR 3036.104-90. DHS is amending the HSAR to implement changes resulting from section 205 of Public Law 109-241 (regarding one-step turnkey selection procedures for design-build contracts of the United States Coast Guard) and to incorporate the delegation of turnkey design-build authority from the Secretary of Homeland Security to the United States Coast Guard.

#### IV. Regulatory Analyses

##### A. Executive Order 12866 Assessment

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The proposed rule reduces proposal submittal requirements for Design-Build contracts through a one-step turnkey

selection process and, therefore, will not result in any additional cost to the government or private sector.

#### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), DHS has considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The less complex one-step turnkey selection procedures under this proposed rule would encourage small businesses to participate in the source selection process being implemented for United States Coast Guard Design-Build contracts. Therefore, the Department of Homeland Security certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a written comment to the contact information previously identified in this proposed rule. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

#### *C. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *D. Paperwork Reduction Act*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *E. Executive Order 13132: Federalism*

A rule has implications for federalism under Executive Order 13132,

Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### *F. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights*

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *G. Executive Order 12988: Civil Justice Reform*

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### *I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *J. Executive Order 13211: Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have

determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### *K. National Environmental Policy Act*

The Department of Homeland Security considered the proposed rule under Management Directive 5100.1, Environmental Planning Program, that provides DHS the implementing policy for complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). DHS has determined that this rulemaking would not individually or cumulatively have a significant effect on the human environment and, therefore, neither an environmental assessment nor an environmental impact statement is required. This rulemaking is among the category of actions included in Categorical Exclusion A3 for promulgation of rules of an administrative or procedural nature.

#### **List of Subjects in 48 CFR Part 3036**

Government procurement.

Dated: July 10, 2007.

**Elaine C. Duke,**  
Chief Procurement Officer.

Accordingly, DHS proposes to amend 48 CFR part 3036 as follows:

1. The authority citation for 48 CFR part 3036 continues to read as follows:

**Authority:** 41 U.S.C. 418b(a) and (b).

#### **PART 3036—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

2. Add subpart 3036.1 to read as follows:

##### **Subpart 3036.1 General**

##### **3036.104 Policy.**

**3036.104–90 Authority for one-step turnkey design-build contracting for the United States Coast Guard (USCG).**

The Head of the Contracting Activity (HCA) of the U.S. Coast Guard may use one-step turnkey selection procedures to enter into fixed-price design-build contracts in accordance with 14 U.S.C. 677.

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