

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 15 and 37

[FAR Case 97-038]

RIN 9000-A107

Federal Acquisition Regulation;
Evaluation of Proposals for
Professional Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to provide guidance on the evaluation of proposals that include uncompensated overtime hours. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before October 23, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97-038@gsa.gov. Please cite FAR case 97-038 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat (MVR), Room 4035, 1800 F Street, NW, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson at (202) 501-0692. Please cite FAR case 97-038.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR Parts 15 and 37 to provide guidance on use of the provision at 52.237-10, Identification of Uncompensated Overtime. Item VII of Federal Acquisition Circular (FAC) 97-01 (62 FR 44813, August 22, 1997) elevated guidance regarding uncompensated overtime from Part 237 of the Defense Federal Acquisition Regulation Supplement (DFARS) to FAR Part 37, and elevated a DFARS solicitation provision to FAR 52.237-10. However, no information regarding the evaluation of proposals that include uncompensated overtime was added to FAR Part 15 by FAC 97-01. This proposed rule adds guidance at FAR 15.305 and 37.115 to address the evaluation of proposed uncompensated overtime hours.

B. Regulatory Flexibility Act

This proposed 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 guidance proposed for inclusion in FAR Parts 15 and 37 is consistent with the existing policy pertaining to uncompensated overtime at FAR 37.115 and 52.237-10. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97-038), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 15 and 37

Government procurement.

Dated: August 18, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 15 and 37 be amended as set forth below:

1. The authority citation for 48 CFR Parts 15 and 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY
NEGOTIATION

2. Section 15.305 is amended in paragraph (a)(1) by adding a parenthetical as the penultimate sentence to read as follows:

§ 15.305 Proposal evaluation.

(a) * * *

(1) * * * (See 37.115 for uncompensated overtime evaluation.)

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PART 37—SERVICE CONTRACTING

3. Section 37.115-2 is amended by adding paragraph (c) to read as follows:

§ 37.115-2 General policy.

* * * * *

(c) Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the [Government's requirements (see 15.305 for competitive negotiations and 15.404-1(d) for cost realism analysis). [When acquiring these services, contracting officers shall conduct a risk assessment and evaluate, for award on that basis, any proposals received that reflect factors such as—

(1) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(2) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

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