

Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found in appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the state of Iowa through the Iowa Department of Natural Resources (IDNR) have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Red Oak City Landfill Superfund site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

**DATES:** Comments concerning this site must be received by August 25, 2005.

**ADDRESSES:** Written comments should be addressed to Bob Stewart, Remedial Project Manager, Superfund Division, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, KS 66101.

**FOR FURTHER INFORMATION CONTACT:** Bob Stewart, Remedial Project Manager, U.S. EPA, Region VII, Superfund Division, Iowa/Nebraska Remedial Branch, 901 North 5th Street, Kansas City, KS 66101, fax (913) 551-9654, or 1-800-223-0425.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

**Information Repositories:** Information concerning this deletion decision can be found in the Deletion Docket at the information repositories at the following locations: U.S. EPA, Region VII, Superfund Division Records Center, 901 North 5th Street, Kansas City, KS 66101 and at the IDNR, Henry A. Wallace

Building, 900 East Grand, Des Moines, IA 50319.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 5, 2005.

**James B. Gulliford,**

*Regional Administrator, Region VII.*

[FR Doc. 05-14609 Filed 7-25-05; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2, 5, 7, 14, 37, and 52

[**FAR Case 2004-021**]

**RIN 9000-AK25**

#### Federal Acquisition Regulation; OMB Circular A-76

**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 (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide language that is consistent with OMB Circular A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003.

**DATES:** Interested parties should submit comments in writing on or before September 26, 2005 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2004-021 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.2004-021@gsa.gov](mailto:farcase.2004-021@gsa.gov). Include FAR case 2004-021 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 FAR case 2004-021 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. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAR case 2004-021.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

OMB Circular A-76 (Revised), Performance of Commercial Activities, was issued in May 2003. The language at FAR Subpart 7.3, and elsewhere, reflects the policies contained in the previous version of the Circular and in Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions, which was superseded by the revised Circular.

To implement the policies of the revised Circular, the Councils propose to delete the language at FAR Subpart 7.3 and replace it with clear and concise information that does not duplicate the Circular. Accordingly, the following changes are proposed:

- Delete the reference to a list of commercial activities contained in an attachment to the previous Circular A-76 in the definition of inherently governmental functions at FAR 2.101.

- Revise FAR 5.205(e) to reflect the procedure contracting officers must follow when issuing public announcements of public-private competitions through the Government Point of Entry.

- Replace the reference to OFPP Policy Letter 91-2 in FAR 7.105(b)(9) with a reference to Subpart 7.5.

- Delete the title and contents of FAR 7.300 and reserve the section for future use.

- Rename FAR 7.301 as Definitions, and state that the terms used in the subpart are defined by the Circular.

- Rename FAR 7.302 and concisely set forth the general policy purposes of the Circular. Consistent with section 326 of the Ronald W. Reagan National

Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375), specifically naming the Agency Tender Official as an interested party for purposes of filing a protest with the Government Accountability Office (GAO) under FAR 33.103. GAO published a final rule to amend its Bid Protest Regulations on April 14, 2005 (70 FR 19680).

• Add a statement at FAR 7.302(c) precluding the use of discussions to permit correction of deficiencies in sealed bids in public-private competitions. During the development of the rule, some members of the Councils questioned whether the "special considerations" language addressing the source selection process in Attachment B of Circular A-76 was intended to permit discussions to correct deficiencies under sealed bidding. Officials from the Office of Federal Procurement Policy (OFPP) advised the Councils that the Circular should not be read to permit discussions in sealed bidding. Rather, sealed bidding under A-76 is to be conducted consistent with FAR Part 14, as stated in paragraph D.5.a of Attachment B of Circular A-76. OFPP further clarified that the Circular's special considerations coverage on deficiencies was directed at negotiated source selection procedures, where the FAR provides for exchanges under FAR 15.306. To avoid confusion on this point, the Councils, with OFPP concurrence, propose to add a statement at FAR 7.302(c) to make clear that contracting officers shall not hold discussions to correct deficiencies when using sealed bidding in public-private competitions under OMB Circular A-76. This will ensure that the Circular and the FAR are applied in a consistent manner.

• Delete the contents of FAR 7.303, 7.304, 7.306, and 7.307 and reserve FAR 7.303 and 7.304 for future use.

• Revise the language in FAR 7.305 to reflect the terminology used in the Circular.

• Amend FAR 7.500 to delete the reference to OFPP Policy Letter 92-1.

• Delete FAR 14.203-2(b) so that information dissemination requirements are consistent with the revised Circular.

• Revise FAR 37.503(c) to delete the reference to OFPP Policy Letter 92-1 and replace it with language stating that agency heads, before contracting for services, must ensure that specific policies are in place to ensure that inherently governmental functions are performed by Government personnel.

• Rename and revise the provision at 52.207-1 to reflect the current

procedures that are to be followed in a standard public-private competition.

• Rename and revise the provision at 52.207-2 to reflect the current procedures that are to be followed in a streamlined public-private competition.

• Amend the clause at 52.207-3, Right of First Refusal of Employment, to cover the group of people directly affected by public-private competitions under new definitions in the Circular. The Circular uses the term "Government personnel" instead of the more narrow "Government employees." The clause will be consistent with the Circular.

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 Councils do not expect this proposed rule 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. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 5, 7, 14, 37, and 52 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.* (FAR case 2004-021), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed 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.*

**List of Subjects in 48 CFR Parts 2, 5, 7, 14, 37, and 52**

Government procurement.

Dated: July 18, 2005.

**Julia B. Wise,**

*Director, Contract Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 5, 7, 14, 37, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 5, 7, 14, 37, and 52 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 "Inherently governmental function", by removing the last sentence in paragraph (2).

**PART 5—PUBLICIZING CONTRACT ACTIONS**

3. Amend section 5.205 by revising paragraph (e) to read as follows:

**5.205 Special situations.**

\* \* \* \* \*

(e) *Public-private competitions under OMB Circular A-76.* (1) The contracting officer shall make a formal public announcement for each streamlined or standard competition. The public announcement shall include, at a minimum, the agency, agency component, location, type of competition (streamlined or standard), activity being competed, incumbent service providers, number of Government personnel performing the activity, name of the Competitive Sourcing Official, name of the contracting officer, name of the Agency Tender Official, and projected end date of the competition.

(2) The contracting officer shall announce the end of the streamlined or standard competition by making a formal public announcement of the performance decision. (See OMB Circular A-76.)

\* \* \* \* \*

**PART 7—ACQUISITION PLANNING**

4. Amend section 7.105 by revising paragraph (b)(9) to read as follows:

**7.105 Contents of written acquisition plans.**

\* \* \* \* \*

(b) \* \* \*

(9) *Inherently governmental functions.* Address the consideration given to Subpart 7.5.

\* \* \* \* \*

5. Revise Subpart 7.3 to read as follows:

**Subpart 7.3—Contractor Versus Government Performance**

*Sec.*

7.300 [Reserved]

7.301 Definitions.

7.302 Policy.

7.303 [Reserved]

7.304 [Reserved]

7.305 Solicitation provisions and contract clause.

**7.300 [Reserved]****7.301 Definitions.**

Definitions of “inherently governmental activity” and other terms applicable to this subpart are set forth at Attachment D of the Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (the Circular).

**7.302 Policy.**

(a) The Circular provides that it is the policy of the Government to—

(1) Perform inherently governmental activities with Government personnel; and

(2) Subject commercial activities to the forces of competition.

(b) As provided in the Circular, agencies shall—

(1) Not use contractors to perform inherently governmental activities;

(2) Conduct public-private competitions in accordance with the provisions of the Circular and, as applicable, these regulations;

(3) Give appropriate consideration relative to cost when making performance decisions between agency and contractor performance in public-private competitions;

(4) Consider the Agency Tender Official an interested party in accordance with 31 U.S.C. 3551 to 3553 for purposes of filing a protest at the Government Accountability Office; and

(5) Hear contests in accordance with OMB Circular A-76, Attachment B, paragraph F.

(c) When using sealed bidding in public-private competitions under OMB Circular A-76, contracting officers shall not hold discussions to correct deficiencies.

**7.303 [Reserved]****7.304 [Reserved]****7.305 Solicitation provisions and contract clause.**

(a) The contracting officer shall, when soliciting offers and tenders, insert in solicitations issued for standard competitions the provision at 52.207-1, Notice of Standard Competition.

(b) The contracting officer shall, when soliciting offers, insert in solicitations issued for streamlined competitions the provision at 52.207-2, Notice of Streamlined Competition.

(c) The contracting officer shall insert the clause at 52.207-3, Right of First Refusal of Employment, in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the

Government and in contracts that result from the solicitations, whether or not a public-private competition is conducted. The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

**7.500 [Amended]**

6. Amend section 7.500 by removing the last sentence.

**PART 14—SEALED BIDDING****14.203-2 [Amended]**

7. Amend section 14.203-2 by removing the paragraph designation “(a)” and by removing paragraph (b).

**PART 37—SERVICE CONTRACTING**

8. Amend section 37.503 by revising paragraph (c) to read as follows:

**37.503 Agency-head responsibilities.**

\* \* \* \* \*

(c) Specific procedures are in place before contracting for services to ensure that inherently governmental functions are performed by Government personnel; and

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

9. Revise the section heading and text of section 52.207-1 to read as follows:

**52.207-1 Notice of Standard Competition.**

As prescribed in 7.305(a), insert the following provision:

NOTICE OF STANDARD COMPETITION (DATE)

(a) This solicitation is part of a standard competition under Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (hereafter “the Circular”), to determine whether to accomplish the specified work under contract or by Government performance.

(b) The Government will evaluate private sector offers, the agency tender, and public reimbursable tenders, as provided in this solicitation and the Circular.

(c) A performance decision resulting from this standard competition will be publicly announced in accordance with the Circular. If the performance decision favors a private sector offeror, a contract will be awarded. If the performance decision favors an agency or a public reimbursable tender, the Contracting Officer shall establish, respectively, either a Most Efficient Organization letter of obligation or a fee-for-service agreement, as those terms are defined in the Circular.

(d) As provided in the Circular, directly interested parties may file contests, which are governed by the procedures in FAR 33.103. Until resolution of any contest, or the expiration of the time for filing a contest, only legal agents for directly interested parties shall have access to the certified

standard competition form, the agency tender, and public reimbursable tenders. (End of provision)

10. Revise section 52.207-2 to read as follows:

**52.207-2 Notice of Streamlined Competition.**

As prescribed in 7.305(b), insert the following provision:

NOTICE OF STREAMLINED COMPETITION (DATE)

(a) This solicitation is part of a streamlined competition under Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (hereafter “the Circular”), to determine whether to accomplish the specified work under contract or by Government performance.

(b) The Government will evaluate the cost of private sector and Agency or public reimbursable performance, as provided in this solicitation and the Circular.

(c) A performance decision resulting from this streamlined competition will be publicly announced in accordance with the Circular. If the performance decision favors private sector performance, the Contracting Officer shall either award a contract or issue a competitive solicitation for private sector offers. If the performance decision favors Agency or public reimbursable performance, the Agency shall establish, respectively, either a letter of obligation or a fee-for-service agreement, as those terms are defined in the Circular.

(End of provision)

**52.207-3 [Amended]**

11. Amend section 52.207-3 by revising the date of the clause to read “(DATE)” and by removing from paragraphs (a) and (b) of the clause the word “employees” and adding “personnel” in its place.

[FR Doc. 05-14569 Filed 7-25-05; 8:45 am]

BILLING CODE 6820-EP-S

**DEPARTMENT OF DEFENSE****48 CFR Parts 247 and 252**

[DFARS Case 2003-D028]

**Defense Federal Acquisition Regulation Supplement; Transportation**

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on transportation matters relating to DoD contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.