

List of Subjects in 48 CFR Parts 1, 2, 7, 11, 31, and 39

Government procurement.

Dated: September 19, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 1, 2, 7, 11, 31, and 39, which was published at 70 FR 57449, September 30, 2005, and a correction published at 70 FR 69100, November 14, 2005, is adopted as a final rule without change.

[FR Doc. 06–8201 Filed 9–27–06; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 4, 12, 14, and 15**

[FAC 2005–13; FAR Case 2005–025; Item III; Docket 2006–0020, Sequence 4]

RIN 9000–AK56

Federal Acquisition Regulation; FAR Case 2005–025, Online Representations and Certifications Application (ORCA) Archiving Capability

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 address the record retention policy where the Online Representations and Certifications Application (ORCA) is used to submit an offeror's representations and certification.

DATES: *Effective Date:* September 28, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before November 27, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–13, FAR case

2005–025, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for this document at the “Federal Acquisition Regulation” agency and review the “Document Title” column; click on the Document ID number. Click on “Add Comments”.

You may also search for any document using the “Advanced search/document search” tab, selecting from the agency field “Federal Acquisition Regulation”, and typing the FAR case number in the keyword field.

- 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 2005–13, FAR case 2005–025, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. The TTY Federal Relay Number for further information is 1–800–877–8973. Please cite FAC 2005–13, FAR case 2005–025. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:**A. Background**

Under FAR Subpart 4.12 prospective contractors are required to submit Annual Representations and Certifications via the Online Representations and Certifications Application (ORCA), a part of the Business Partner Network. Using ORCA eliminates the administrative burden for contractors of submitting the same information to various contracting offices, and establishes a common source for this information to procurement offices throughout the Government.

FAR 4.803(a)(11) requires contracting officers to include contractor representations and certifications in the contract file. Given ORCA's capability to archive a contractor's representations and certifications by date, contracting officers no longer need to file a paper copy of a contractor's representations and certifications in the contracting office contract files, but should incorporate archived ORCA records by reference, along with any changes

submitted in the FAR provisions at 52.204–8 or 52.212–3, in the contract file to satisfy the contract file documentation requirements.

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 management of the contract file is not accomplished by the vendor community, only by government contracting entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 4, 12, 14, and 15 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 2005–13, FAR case 2005–025), 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 the rule addresses policy regarding the filing of proper documentation in the contract file by the contracting officer, which is internal to the Government, and not accomplished by the vendor community. 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 4, 12, 14, and 15

Government procurement.

Dated: September 19, 2006.

Ralph De Stefano,
Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 12, 14, and 15 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 12, 14, and 15 continues 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 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.803 by revising paragraph (a)(11) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(11) Contractor's representations and certifications (see 4.1201(c)).

* * * * *

■ 3. Amend section 4.1201 by adding paragraph (c) to read as follows:

4.1201 Policy.

* * * * *

(c) Data in ORCA is archived and is electronically retrievable. Therefore, when a prospective contractor has completed representations and certifications electronically via ORCA, the contracting officer may reference the date of ORCA verification in the associated Government contract file, rather than including a paper copy of the electronically-submitted representations and certifications in the file. Such a reference satisfies contract file documentation requirements of 4.803(a)(11). However, if an offeror identifies changes to ORCA data pursuant to the FAR provisions at 52.204-8(c) or 52.212-3(k), the contracting officer must include a copy of the changes in the contract file.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.301 by revising the first sentence of paragraph (b)(2) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b)(2) * * * This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is attached to the solicitation for offerors to complete. * * *

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PART 14—SEALED BIDDING

■ 5. Amend section 14.201-1 by adding to paragraph (c) a parenthetical

following the third sentence to read as follows:

14.201-1 Uniform contract format.

* * * * *

(c) * * * (See 4.1201(c).) * * *

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PART 15—CONTRACTING BY NEGOTIATION

■ 6. Amend section 15.102 by revising the second sentence of paragraph (b) to read as follows:

15.102 Oral presentations.

* * * * *

(b) * * * However, representations and certifications shall be submitted as required in the FAR provisions at 52.204-8(c) or 52.212-3(k), and a signed offer sheet (including any exceptions to the Government's terms and conditions) shall be submitted in writing.

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■ 7. Amend section 15.204-1 by adding to paragraph (b) a parenthetical following the second sentence to read as follows:

15.204-1 Uniform contract format.

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(b) * * * (See 4.1201(c).) * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 17, 19, 22, 25, 28, 32, 36, 42, 48, 49, 50, 52, and 53

[FAC 2005-13; FAR Case 2004-033; Item IV; Docket 2006-0020, Sequence 17]

RIN 9000-AK26

Federal Acquisition Regulation; FAR Case 2004-033, Inflation Adjustment of Acquisition-Related Thresholds

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to adjust acquisition-

related thresholds for inflation, in accordance with 41 U.S.C. 431a as added by section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). This rule also amends some acquisition-related thresholds that are based on policy rather than statute. Inflation adjustment of cost accounting standards (CAS) thresholds will be addressed in a separate case.

DATES: *Effective Date:* September 28, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949. Please cite FAC 2005-13, FAR case 2004-033. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Statute. This final rule implements 41 U.S.C. 431a as added by Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). 41 U.S.C. 431a provides for adjustment every 5 years of acquisition-related thresholds, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. This rule also escalates some nonstatutory acquisition-related thresholds. The statute does not permit escalation of acquisition-related thresholds established by the Davis Bacon Act, the Service Contract Act, or trade agreements. The statute does not authorize the FAR to escalate thresholds originating in executive order or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the executive order or agency regulations are first amended.

Public Comments. DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 70 FR 73415, December 12, 2005. We received eight responses to the proposed rule (available at <http://www.regulations.gov/>). All the responses were from Government personnel. Almost all the responses related to the proposed increase in the micro-purchase threshold. The Councils did not agree to any changes to the proposed rule based on the public comments. However, as addressed below, some of the thresholds have changed in the final rule.