

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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 addresses internal agency procedures and will benefit small entities by encouraging competition after a one year performance period, except when a longer performance period is properly approved. Therefore, a Final Regulatory Flexibility Analysis has not been performed.

### 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. Chapter 35, *et seq.*

#### List of Subjects in 48 CFR Part 6

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition 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 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).

■ 2. Amend section 6.302–2 by adding paragraph (d) to read as follows:

#### 6.302–2 Unusual and compelling urgency.

\* \* \* \* \*

(d) *Period of Performance.* The total period of performance of a contract awarded using this authority—

(1) May not exceed the time necessary:

(i) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(ii) For the agency to enter into another contract for the required goods and services through the use of competitive procedures.

(2) May not exceed one year unless the head of the agency entering into the

contract determines that exceptional circumstances apply.

(3) The requirements in paragraphs (1) and (2) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

(4) The determination of exceptional circumstances is in addition to the approval of the justification in 6.304.

(5) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 12 and 52

[FAC 2005–37; FAR Case 2008–026; Item III; Docket 2009–0013, Sequence 1]

RIN 9000–AL25

#### Federal Acquisition Regulation; FAR Case 2008–026, GAO Access to Contractor Employees

**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 adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) which allows the Government Accountability Office to interview current contractor employees during the audit of the contractor's records.

**DATES:** *Effective Date:* October 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward Loeb, Director, Contract Policy Division at (202) 501–0650. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–37, FAR case 2008–026.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110–417) added language allowing the Comptroller General to interview current employees regarding transactions being examined during an audit of contracting records. The Act revises 41 U.S.C. 254d(c)(1) and 10 U.S.C. 2313(c)(1) by inserting before the period: “and to interview any current employee regarding such transactions”. To implement the Act, FAR clauses 52.215–2, Audit and Records—Negotiation, and 52.214–26, Audit and Records—Sealed Bidding, were amended to add the required statutory language. The statute did not specify that section 871 apply to commercial item contracts and therefore was not applied to FAR clause 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Order—Commercial Items. Section 34 of the Office of Federal Procurement Policy Act (OFPP), 41 U.S.C. 430, exempts commercial item acquisitions from new provisions of law, such as section 871, unless (1) the law provides criminal or civilian penalties, (2) the law expressly refers to 41 U.S.C. 430 and states that it applies to commercial item contracts, or (3) the FAR Council makes a written determination that it would not be in the best interest of the Federal Government to exempt commercial item contracts. Thus, this new provision was added to the list of inapplicable laws at FAR 12.503(a).

DoD, GSA, and NASA published an interim rule with a request for comments in the **Federal Register** at 74 FR 14649 on March 31, 2009. No comments were received. The interim rule is converted to a final rule without change.

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12886, 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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 only a small number of small businesses are audited by the Government Accountability Office (GAO). Currently

many GAO audits of small business contractors include contractor employee interviews. This Act is designed to cover those incidents in which the contractor does not voluntarily make the contractor employees available for interviews. Therefore, it is not anticipated that interviewing any current employee regarding such contract transactions will have a significant impact.

### 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. Chapter 35, *et seq.*

### List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 12 and 52, which was published in the **Federal Register** at 74 FR 14649 on March 31, 2009, is adopted as a final rule without change.

[FR Doc. E9-24568 Filed 10-13-09; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 15

[FAC 2005-37; FAR Case 2008-034; Item IV; Docket 2009-0035, Sequence 1]

RIN 9000-AL44

### Federal Acquisition Regulation; FAR Case 2008-034, Use of Commercial Services Item Authority

**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) are issuing an interim rule

amending the Federal Acquisition Regulation (FAR) to implement section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Section 868 provides that purchases of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace may only be considered commercial items for the purposes of the FAR if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

**DATES:** *Effective Date:* October 14, 2009.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before December 14, 2009 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-37, FAR case 2008-034, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008-034" into the field "Keyword". Select the link that corresponds with FAR Case 2008-034. Follow the instructions provided to submit your comment. Please include your name, company name (if any), and "FAR Case 2008-034" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005-37, FAR case 2008-034, 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:** Mr. Edward N. Chambers, Procurement Analyst, at (202) 501-3221 for clarification of content. Please cite FAC 2005-37, FAR case 2008-034. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755.

### SUPPLEMENTARY INFORMATION:

#### A. Background

Section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) states that the FAR shall be amended

with respect to the procurement of commercial services, specifically services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. These services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such services. The rule details the information the contracting officer may consider in order to make this determination.

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 this interim rule primarily impacts actions required on the part of the Government by requiring a new written determination by the contracting officer. Since the current 15.403-3(a)(1) provides for contracting officers to obtain the information necessary to evaluate price reasonableness, this interim rule places no additional requirements on contractors. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR part 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 2005-37, FAR case 2008-034), in all correspondence.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0013.

#### 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