

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 2**

[FAC 2005–66; FAR Case 2013–003; Item I; Docket 2013–0003, Sequence 1]

RIN 9000–AM48

**Federal Acquisition Regulation;
Definition of Contingency Operation**

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

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to revise the definition of “contingency operation” to address the statutory change to the definition made by the National Defense Authorization Act for Fiscal Year 2012.

DATES: Effective February 28, 2013.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before April 29, 2013 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–66, FAR Case 2013–003, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2013–003”. Select the link “Submit a Comment” that corresponds with “FAR Case 2013–003”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2013–003” on your attached document.

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

Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–66, FAR Case 2013–003, 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: Ms. Patricia Corrigan, Procurement Analyst, at 202–208–1963, for clarification of

content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–66, FAR Case 2013–003.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA are publishing an interim rule amending the FAR to revise the definition of “contingency operation” at FAR 2.101 in accordance with the statutory change to the definition made by paragraph (b) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81, enacted December 31, 2011). The definition of “contingency operation” was amended at 10 U.S.C. 101(a)(13) by adding “12304a”.

Paragraph (a) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), entitled “Authority to Order Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to Active Duty to Provide Assistance in Response to a Major Disaster or Emergency”, amends chapter 1209 of title 10, United States Code, by incorporating a new provision at section 12304a that provides for treatment of an operation as a contingency operation when the Secretary of Defense activates Reserves under the terms of 10 U.S.C. 12304a in response to a Governor’s request for Federal assistance in responding to a major disaster or emergency declared by the President.

This interim rule adds a reference to section 12304a of Title 10, United States Code (from section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81)) to the list of references in section (2) of the definition of “contingency operation” in FAR 2.101, Definitions.

II. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs (OIRA) has deemed that this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993, and

that this rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The change may 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.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

Expanding the definition of “contingency operation” to include responding to a Presidential declaration of a major disaster or emergency (as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) will increase the circumstances under which “contingency operations” may be declared, thereby allowing defense and civilian agencies to raise thresholds, *i.e.*, micro-purchase, simplified acquisition threshold, for acquisitions made in support of emergencies in accordance with the authorities listed at FAR 18.201, and exercise preferences, such as local area set-asides or evaluation preferences.

Because “local businesses” may vary in size and business ownership, and the locations of disasters vary, we do not expect the amendment to have a direct and sustained economic impact on a substantial number of small entities. However, there is the possibility that, because the Robert T. Stafford Disaster Relief and Emergency Assistance Act provides for a preference for local organizations, firms, and individuals when contracting for major disaster or emergency activities, implementation of the revised definition for “contingency operation” may increase opportunities for awarding contracts to small entities located at or near major disaster areas or emergency activities.

In addition, FAR 19.502–2(a) requires simplified acquisitions during a contingency operation within the United States (\$300,000 instead of \$150,000) to be automatically reserved for small businesses (with the usual exceptions). The ability to restrict purchases up to two times the normal simplified acquisition threshold for small businesses will have a significant positive impact on small entities.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–66, FAR Case 2013–003) in correspondence.

IV. Paperwork Reduction Act

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. 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 section 515 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81) was enacted on December 31, 2011, and was effective upon enactment. Section 515 provided the legal basis for declaration of contingency operations and the exercise of related procurement flexibilities in support of Hurricane Sandy relief in October 2012. It remains necessary to implement the statute by revising the definition of “contingency operation” in FAR 2.101 to ensure regulatory conformance with statute. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subject in 48 CFR Part 2

Government procurement.

Dated: February 20, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 2 as set forth below:

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for 48 CFR part 2 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20115.

■ 2. Amend section 2.101, in paragraph (b)(2), by revising paragraph (2) of the definition “Contingency operation” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Contingency operation * * *

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under sections 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of title 10 of the United States Code, Chapter 15 of title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

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[FR Doc. 2013–04599 Filed 2–27–13; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 16, and 52

[FAC 2005–66; FAR Case 2011–025; Item II; Docket 2011–0025, Sequence 1]

RIN 9000–AM28

Federal Acquisition Regulation; Changes to Time-and-Materials and Labor-Hour Contracts and Orders

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to provide additional guidance when raising the ceiling price or otherwise changing the scope of work for a time-and-materials (T&M) or labor-hour (LH) contract or order.

DATES: *Effective* April 1, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–66, FAR Case 2011–025.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 77 FR 43780 on July 26, 2012, to address actions required when raising the ceiling price or otherwise changing the general scope of a T&M or LH contract or order. One respondent submitted a comment on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment in the development of the final rule. The comment submitted agreed with the intent of the rule and praised it as a helpful change. The final rule is published without change from the proposed rule.

III. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs (OIRA) has deemed that this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993, and that this rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

In finalizing FAR rule 2009–043 Time-and-Materials and Labor-Hour Contracts for Commercial Items it became apparent that the guidance in the FAR on raising the ceiling price for a T&M or LH contract or order was not clear or consistent throughout the FAR. This case was opened to clarify the procedures necessary to raise the ceiling price of a T&M or LH contract or order.

No significant issues were raised by the public and no changes were made to the proposed rule.

No comments were submitted by the Chief Counsel for Advocacy of the Small Business Administration.

This rule deals with the administration of T&M and LH contracts and orders and will have no direct effect on contractors. In FY2011 the Federal Government awarded 23,023 T&M and LH contracts or orders of which 6,315 went to small businesses. This rule will not affect how many small businesses are awarded this type of contract.

This rule does not add any new information collection requirements.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat