

authority to the Bureaus to modify, supplement, and update those instructions and templates as appropriate to supplement information WCB will be receiving in response to the 2023 Mandatory Data Collection.

6. Pursuant to their delegated authority, the Bureaus have proposed revisions to the instructions, templates, and certification form for the Annual Reports and are issuing the document to seek comment on all aspects of these proposed changes.

#### *B. Legal Basis*

7. The proposed action is authorized pursuant to sections 1, 2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Act, Public Law 117–338, 136 Stat. 6156 (2022).

#### *C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply*

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed Annual Reports data collection. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. noted above,

9. As noted above, Regulatory Flexibility Analyses were incorporated in the 2022 ICS Order and the 2023 IPCS Notice. In those analyses, the Commission described in detail the small entities that might be affected. In this Supplemental IRFA, the Bureaus hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the 2022 ICS Order and 2023 IPCS Notice.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

10. The document seeks comment on the specifics of the proposed revisions to the instructions, templates, and certification form to ensure the Commission receives the data it needs for the Annual Reports. The proposed data collection would require certain providers that are classified as inmate calling services providers under the Commission’s rules to submit, among

other things, data and other information on providers’ operations, IPCS rates, ancillary services, site commissions, and disability access. The proposed data collection may subject small and other providers to modified or new reporting or other compliance obligations. In addition, the Bureaus recognize that their actions in this proceeding may affect the reporting, recordkeeping, and other compliance requirements for several groups of small entities. At this time, the Bureaus do not have sufficient information to determine whether the proposed revisions to the Annual Reports data collection will require small entities to hire attorneys, engineers, or other professionals to comply with the new rules. The Bureaus, however, anticipate the information they receive in the comments will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries the Bureaus make in the document.

#### *E. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered*

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.” The Bureaus will consider these factors after reviewing any substantive comment the Bureaus have received from the public and potentially affected small entities.

12. In the document, the Bureaus have taken steps to minimize the economic impact on small entities and consider alternatives through its proposals that include considering different ways to revise the Annual Reports instructions, templates, and certification form without causing significant economic impact to small entities. For example, the Bureaus propose reporting and certification requirements that are similar to those used in prior Annual Reports data collections. In addition, the standardized templates and instructions simplify compliance with, and reduce

the burden of, the information requirements related to submission of the Annual Reports. Further, the Bureaus have taken steps to ensure the instructions, annual reporting templates, and certification form are competitively neutral and are not unduly burdensome for all providers. Finally, the document proposes to allow providers that charge the same rates for domestic and international video IPCS to opt out of filing a separate spreadsheet for international video IPCS, thus reducing the regulatory burden to providers. The Bureaus will also consider any significant economic impact to small entities that may be raised in comments filed in response to the document and Supplemental IRFA.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

13. None.

Federal Communications Commission.

**Lynne Engledow**

*Deputy Chief, Pricing and Policy Division, Wireline Competition Bureau.*

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## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Part 16**

[FAR Case 2020–005; Docket No. FAR–2020–0005; Sequence No. 1]

**RIN 9000–AO08**

#### **Federal Acquisition Regulation: Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts**

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that requires explanations to unsuccessful awardees on certain orders under task order and delivery order contracts.

**DATES:** Interested parties should submit written comments to the Regulatory

Secretariat Division at the address shown below on or before October 10, 2023 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2020–005 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for “FAR Case 2020–005”. Select the link “Comment Now” that corresponds with “FAR Case 2020–005”. Follow the instructions provided on the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2020–005” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*Instructions:* Please submit comments only and cite “FAR Case 2020–005” in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or by email at [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov), for clarification of content. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAR Case 2020–005.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Background**

DoD, GSA, and NASA are proposing to revise the FAR to implement section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92) which, for task orders or delivery orders exceeding the simplified acquisition threshold (SAT) but not greater than \$6 million, requires contracting officers to provide, upon written request from an unsuccessful offeror, a brief explanation as to why the offeror was unsuccessful, including the rationale for award and an evaluation of the significant weak or deficient factors in the offeror’s offer.

Section 874 of the NDAA uses the term “unsuccessful offeror.” FAR 16.505 uses the term “unsuccessful awardee”. Both terms are synonymous; referring to an entity who has been awarded a basic contract but has been unsuccessful for the award of an order competed under the basic contract. Since the term “unsuccessful awardee” is already used and understood by the acquisition community, the term will be used to implement the requirement.

FAR 16.505(b)(6) requires contracting officers to notify unsuccessful awardees when the total price of a task order or delivery order exceeds \$6 million. If the \$6 million threshold is met, contracting officers are directed to the procedures at FAR 15.503(b)(1) and FAR 15.506 when providing a postaward notification or postaward debriefing, respectively.

The FAR threshold at 16.505 is currently \$6 million as a result of two inflation adjustments in accordance with FAR 1.109. FAR Case 2014–022 published on July 2, 2015, at 80 FR 38293 and 2019–013 published on October 2, 2020, at 85 FR 62485 each raised the threshold by \$500,000 from the \$5 million reflected at 41 U.S.C. 4106(d).

### **II. Discussion and Analysis**

The proposed rule implements the requirement for contracting officers to, upon written request from an unsuccessful awardee, provide a brief explanation as to why the awardee was unsuccessful for a task order or delivery order exceeding the SAT but not exceeding \$6 million. While the statutory threshold is \$5.5 million, this rule is imposing these debriefing requirements at the higher \$6 million threshold to align with the current threshold at FAR 16.505(b)(6). This avoids a gap between \$5.5 million and \$6 million. This new debriefing requirement for orders above the SAT and below \$6 million does not provide a debriefing at the level of detail currently afforded to unsuccessful awardees over \$6 million, however, this information is expected to benefit entities by improving future offers. While not expressly required by the statute, the proposed rule adds a postaward notification requirement for the applicable task orders and delivery orders to ensure unsuccessful awardees are provided an opportunity to obtain the debriefing information in a timely manner.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services**

This rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, for commercial products, including COTS items, or for commercial services.

### **IV. Expected Impact of the Rule**

This proposed rule is expected to increase the availability of debriefing information to significantly more small and large entities participating in fair opportunity competitions than is currently required by the FAR. When requested by an unsuccessful awardee, the information provided is expected to enable these entities to improve future offers.

### **V. Executive Orders 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. 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. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

### **VI. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this 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. 601–612, because the rule provides postaward information to unsuccessful awardees, if requested. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). For task orders or delivery orders exceeding the simplified acquisition threshold (SAT) but not greater than \$5.5 million, section 874

requires contracting officers to provide, upon written request from an unsuccessful offeror, a brief explanation as to why the offeror's offer was unsuccessful, including the rationale for award and an evaluation of the significant weak or deficient factors in the unsuccessful offeror's offer. While the statutory threshold is \$5.5 million, this rule is implementing this requirement at the higher \$6 million threshold for debriefings currently in the FAR to avoid a gap between \$5.5 million and \$6 million.

The objective of this proposed rule is to increase the availability of debriefing information to significantly more small and large entities participating in fair opportunity competitions than is currently required by the FAR. When requested by an unsuccessful awardee, the information provided is expected to enable these entities to improve future offers. The legal basis for the rule is section 874 of the NDAA for FY 2020. Promulgation of FAR regulations is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

This proposed rule will apply to all entities participating in fair opportunity competitions that exceed the SAT but do not exceed \$6 million. Based upon FY 2018 through FY 2020 data obtained from the Federal Procurement Data System, the Government awarded an average of 53,068 task orders and delivery orders against multiple-award contracts exceeding the SAT but not exceeding \$6 million annually. Of those orders, an estimated 22,863 were awarded to approximately 5,984 unique small entities each year. While DoD, GSA, and NASA are unable to estimate how many unique small entities are unsuccessful awardees and would request information afforded by this rule, it is assumed that at least one small entity may make such a request per opportunity, 22,863 annually.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

The Regulatory Secretariat Division 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 Division. 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 the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2020-005), in correspondence.

#### VII. Paperwork Reduction Act

The 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. 3501-3521).

#### List of Subjects in 48 CFR Part 16

Government procurement.

#### William F. Clark,

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 16 as set forth below:

#### PART 16—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 16 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 2. Amend section 16.505 by revising paragraph (b)(6) to read as follows:

#### 16.505 Ordering.

\* \* \* \* \*

(b) \* \* \*

(6) *Postaward notices and debriefings (41 U.S.C. 4106 and 41 U.S.C. 4106 note).*

(i) For task orders or delivery orders exceeding the simplified acquisition threshold but not exceeding \$6 million, the contracting officer shall—

(A) Provide timely notification to unsuccessful awardees. At a minimum, the notification shall provide the name of the awardee of the order and the total price of the order;

(B) Upon written request, received by the agency within 3 days after the date that the unsuccessful awardee has received notification of award, provide a brief explanation as to why the awardee was unsuccessful that includes—

(1) A summary of the rationale for the award; and

(2) An evaluation of the significant weak or deficient factors in the unsuccessful awardee's offer.

(C) Include the brief explanation in the task order or delivery order file.

(ii) For task orders or delivery orders exceeding \$6 million, the contracting officer shall—

(A) Provide postaward notification to unsuccessful awardees in accordance with the procedures at 15.503(b)(1);

(B) Follow the procedures at 15.506 when providing postaward debriefings to unsuccessful awardees; and

(C) Include a summary of the debriefing in the task order or delivery order file.

\* \* \* \* \*

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