

Emergency Area, in all solicitations and contracts that involve local area set-asides.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Revise section 52.212–5 in clause heading and paragraphs (b)(30) and (b)(31) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *
 CONTRACT TERMS AND CONDITIONS
 REQUIRED TO IMPLEMENT STATUTES OR
 EXECUTIVE ORDERS—COMMERCIAL
 ITEMS (Nov 2007)

* * * * *

(b) * * *

(30) 52.226–4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

(31) 52.226–5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

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■ 9. Revise section 52.226–3 to read as follows:

52.226–3 Disaster or Emergency Area Representation.

As prescribed in 26.205(a), insert the following provision:

DISASTER OR EMERGENCY AREA REPRESENTATION (Nov 2007)

(a) *Set-aside area.* The area covered in this contract is:

[Contracting Officer to fill in with definite geographic boundaries.]

(b) *Representations.* The offeror represents that it _____ does _____ does not reside or primarily do business in the set-aside area.

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months—

(1) The offeror had its main operating office in the area; and

(2) That office generated at least half of the offeror’s gross revenues and employed at least half of the offeror’s permanent employees.

(d) If the offeror does not meet the criteria in paragraph (c) of this provision, factors to be considered in determining whether an offeror resides or primarily does business in the set-aside area include—

(1) Physical location(s) of the offeror’s permanent office(s) and date any office in the set-aside area(s) was established;

(2) Current state licenses;

(3) Record of past work in the set-aside area(s) (e.g., how much and for how long);

(4) Contractual history the offeror has had with subcontractors and/or suppliers in the set-aside area;

(5) Percentage of the offeror’s gross revenues attributable to work performed in the set-aside area;

(6) Number of permanent employees the offeror employs in the set-aside area;

(7) Membership in local and state organizations in the set-aside area; and

(8) Other evidence that establishes the offeror resides or primarily does business in the set-aside area. For example, sole proprietorships may submit utility bills and bank statements.

(e) If the offeror represents it resides or primarily does business in the set-aside area, the offeror shall furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

(End of provision)

■ 10. Revise section 52.226–4 to read as follows:

52.226–4 Notice of Disaster or Emergency Area Set-Aside.

As prescribed in 26.205(b), insert the following clause:

NOTICE OF DISASTER OR EMERGENCY AREA SET-ASIDE (Nov 2007)

(a) *Set-aside area.* Offers are solicited only from businesses residing or primarily doing business in

_____ [Contracting Officer to fill in with definite geographic boundaries.] Offers received from other businesses shall not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of clause)

■ 11. Revise section 52.226–5 to read as follows:

52.226–5 Restrictions on Subcontracting Outside Disaster or Emergency Area.

As prescribed in 26.205(c), insert the following clause:

RESTRICTIONS ON SUBCONTRACTING OUTSIDE DISASTER OR EMERGENCY AREA (Nov 2007)

(a) *Definitions.* The definitions of the following terms used in this clause are found in the Small Business Administration regulations at 13 CFR 125.6(e): cost of the contract, cost of contract performance incurred for personnel, cost of manufacturing, cost of materials, personnel, and subcontracting.

(b) The Contractor agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel

shall be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the clause at FAR 52.226–4, Notice of Disaster or Emergency Area Set-Aside;

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The Contractor or employees of other businesses residing or primarily doing business in the set-aside area shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) *General construction.* The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area; or

(4) *Construction by special trade Contractors.* The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area.

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 22

[FAC 2005–21; FAR Case 2007–001; Item VII; Docket 2007–0001; Sequence 9]

RIN 9000–AK81

Federal Acquisition Regulation; FAR Case 2007–001, Labor Standards for Contracts Containing Construction Requirements—Contract Pricing Method References

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 revise references to published pricing sources available to the contracting officer. The revision will

provide greater flexibilities for contracting officers when selecting sources of pricing data.

DATES: *Effective Date:* December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775 for clarification of content. The TTY Federal Relay Number for further information is 1-800-877-8973. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-21, FAR case 2007-001.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 22.404-12(c)(2) allows the contracting officer to include in the contract a separately specified pricing method that permits an adjustment to the contract price or contract labor unit price at the exercise of each option to extend the term of the contract. References to published pricing sources are included to assist the contracting officer in identifying pricing data to support the pricing method used to calculate the contract pricing adjustment. This final rule revises the language at FAR 22.404-12(c)(2) that references published pricing sources available to the contracting officer. The FAR currently references a single commercial product and the intent of this change is to not show favor to any commercial product. The revised language deletes the specified product and allows the contracting officer to choose any commercial product.

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 Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 22 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 2005-21, FAR case 2007-001), 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.*

List of Subjects in 48 CFR Part 22

Government procurement.

Dated: October 31, 2007.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 22 as set forth below:

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 1. The authority citation for 48 CFR part 22 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 22.404-12 by revising the third sentence of paragraph (c)(2) to read as follows:

22.404-12 Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.

* * * * *

(c) * * *

(2) * * * An example of a contract pricing method that the contracting officer might separately specify is incorporation in the solicitation and resulting contract of the pricing data from an annually published unit pricing book (e.g., the U.S. Army Computer-Aided Cost Estimating System or similar commercial product), which is multiplied in the contract by a factor proposed by the contractor (e.g., .95 or 1.1). * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 25, 52, and 53

[FAC 2005-21; Item VIII; Docket FAR-2007-0003; Sequence 3]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective Date:* November 7, 2007.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-21, Technical Amendments.

List of Subjects in 48 CFR Parts 1, 25, 52, and 53

Government procurement.

Dated: October 31, 2007.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 25, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 25, 52, and 53 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by removing FAR Segments 52.210-8 with OMB Control Number "9000-0018", 52.210-9 with OMB Control Number "9000-0016", 52.210-10 with OMB Control Number "9000-0017", and 52.212-1 and 52.212-2 with OMB Control Number "9000-0043"; and adding, in numerical order, FAR Segments 52.211-8 and 52.211-9 with OMB Control Number "9000-0043".

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 3. Amend section 25.003 in the definition "Caribbean Basin country end product" by removing from paragraph (1)(ii)(B) "<http://www.customs.ustreas.gov/impexpo/impexpo.htm>" and adding "<http://www.usitc.gov/tata/hts/>" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-5 [Amended]

■ 4. Amend section 52.212-5 by—
 ■ a. Revising date of the clause to read "(Nov 2007)";
 ■ b. Removing from paragraph (b)(8)(i) "(Sep 2007)" and adding "(Nov 2007)" in its place; and
 ■ c. Removing from paragraph (b)(28) "(Aug 2007)" and adding "(Nov 2007)" in its place.