

offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review and approve the offeror's plan for an EVMS before contract award.

(4) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVM system will be compliant with the ANSI/EIA Standard -748 guidelines.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

(End of provision)

52.234-4 Earned Value Management System.

As prescribed in 34.203(c), insert the following clause:

EARNED VALUE MANAGEMENT SYSTEM (JUL 2006)

(a) The Contractor shall use an earned value management system (EVMS) that has been determined by the Cognizant Federal Agency (CFA) to be compliant with the guidelines in ANSI/EIA Standard - 748 (current version at the time of award) to manage this contract. If the Contractor's current EVMS has not been determined compliant at the time of award, see paragraph (b) of this clause. The Contractor shall submit reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor's EVM System has not been determined by the CFA as complying with EVMS guidelines or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in ANSI/EIA Standard -

748 (current version at time of award), the Contractor shall—

(1) Apply the current system to the contract; and

(2) Take necessary actions to meet the milestones in the Contractor's EVMS plan approved by the Contracting Officer.

(c) The Government will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post award IBR shall be conducted as early as practicable after contract award.

(d) The Contracting Officer may require an IBR at—

(1) Exercise of significant options; or

(2) Incorporation of major modifications.

(e) Unless a waiver is granted by the CFA, Contractor proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the CFA, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.

(g) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: *[Insert list of applicable subcontractors.]*

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 18

[FAC 2005-11; FAR Case 2005-038; Item II; Docket 2006-0020, Sequence 5]

RIN 9000-AK50

Federal Acquisition Regulation; FAR Case 2005-038, Emergency Acquisitions

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 provide a single reference to acquisition flexibilities that may be used to facilitate and expedite acquisitions of supplies and services during emergency situations.

DATES: *Effective Date:* July 5, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before September 5, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-11, FAR case 2005-038, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov/far>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.acquisition.gov/comp/far/ProposedRules/comments.htm>. Click on the FAR case number to submit comments.

- E-mail: farcase.2005-038@gsa.gov. Include FAC 2005-11, FAR case 2005-038 in the subject line of the message.

- 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 2005-11, FAR case 2005-038, in all correspondence related to this case. All comments received will be posted without change to <http://www.acquisition.gov/comp/far/ProposedRules/comments.htm>,

including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Gloria Sochon, Procurement Analyst, at (202) 219-0311. Please cite FAC 2005-11, FAR case 2005-038. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The 2005 Atlantic hurricane season was a record one in terms of the number of hurricanes and their strength. The size and strength of Hurricane Katrina resulted in one of the largest natural disasters to strike the United States. As a result of last year's hurricane season, Federal agencies are looking for methods to expedite their responses during an emergency. Emergency situations, however, go beyond natural disasters and include contingency operations as defined in FAR 2.101 and actions to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States.

This rule revises FAR Part 18 to provide a single reference to the acquisition flexibilities already available in the FAR to facilitate and expedite acquisitions of supplies and services during all types of emergencies. For clarity and ease of use, the flexibilities are divided into two main groups. The first group titled "Available Acquisition Flexibilities" identifies the flexibilities that may be used anytime and do not require an emergency declaration. The second group titled "Emergency acquisition flexibilities" identifies the flexibilities that may be used only after an emergency declaration or designation has been made by the appropriate official. The second group is further divided into three subgroups: contingency operation; defense or recovery from certain attacks; and incidents of national significance, emergency declaration, or major disaster declarations.

In May 2003, the Office of Federal Procurement Policy (OFPP) published guidance on the use of emergency procurement flexibilities to help ensure agencies were well positioned to effectively meet the demands associated with fighting terrorism. The OFPP is currently updating its guidance to also address flexibilities that can be used in other emergency situations such as national emergencies. The final rule will include a reference to the updated OFPP guidance. The Councils would like to

hear the views of interested parties on the sufficiency of these provisions.

In particular, the Councils are interested in input on whether the provisions sufficiently clarify the existing FAR flexibilities that can be used in emergency situations or whether more detailed, comprehensive coverage is needed.

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 the rule makes no change to contracting policy. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part 18 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 2005-11, FAR case 2005-038), 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 to improve the Government's ability to expedite acquisitions of supplies and services during emergency situations. 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 Part 18

Government procurement.

Dated: June 28, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 18 as set forth below:

■ 1. The authority citation for 48 CFR part 18 is revised 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. Add Part 18 to read as follows:

PART 18—EMERGENCY ACQUISITIONS

Sec.

18.000 Scope of part.

18.001 Definition.

Subpart 18.1—Available Acquisition Flexibilities

18.101 General.

18.102 Central contractor registration.

18.103 Synopses of proposed contract actions.

18.104 Unusual and compelling urgency.

18.105 Federal Supply Schedules (FSSs), multi-agency blanket purchase agreements (BPAs), and multi-agency indefinite delivery contracts.

18.106 Javits-Wagner O' Day (JWOD) specification changes.

18.107 Qualifications requirements.

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18.109 Soliciting from a single source.

18.110 Oral requests for proposals.

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18.112 Interagency acquisitions under the Economy Act.

18.113 Contracting with the Small Business Administration (The 8(a) Program).

18.114 HUBZone sole source awards.

18.115 Service-disabled Veteran-owned Small Business (SDVOSB) sole source awards.

18.116 Overtime approvals.

18.117 Use of patented technology under the North American Free Trade Agreement.

18.118 Bid guarantees.

18.119 Advance payments.

18.120 Assignment of claims.

18.121 Electronic funds transfer.

18.122 Protest to GAO.

18.123 Contractor rent-free use of Government property.

18.124 Extraordinary contractual actions.

Subpart 18.2—Emergency Acquisition Flexibilities

18.201 Contingency operation.

18.202 Defense or recovery from certain attacks.

18.203 Incidents of national significance, emergency declaration, or major disaster declaration.

18.204 Resources.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

18.000 Scope of part.

(a) This part identifies acquisition flexibilities that are available for emergency acquisitions. These

flexibilities are specific techniques or procedures that may be used to streamline the standard acquisition process. This part includes—

- (1) Generally available flexibilities; and
- (2) Emergency acquisition flexibilities that are available only under prescribed circumstances.

(b) The acquisition flexibilities in this part are not exempt from the requirements and limitations set forth in FAR Part 3, Improper Business Practices and Personal Conflicts of Interest.

18.001 Definition.

Emergency acquisition flexibilities, as used in this part, means flexibilities provided with respect to any acquisition of supplies or services by or for an executive agency that, as determined by the head of an executive agency, may be used—

- (a) In support of a contingency operation as defined in 2.101;
- (b) To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; or
- (c) When the President declares an incident of national significance, emergency declaration, or a major disaster declaration.

Subpart 18.1— Available Acquisition Flexibilities

18.101 General.

The FAR includes many acquisition flexibilities that are available to the contracting officer when certain conditions are met. These acquisition flexibilities do not require an emergency declaration or designation of contingency operation.

18.102 Central contractor registration.

Contracts awarded to support unusual and compelling needs or emergency acquisitions are exempt from the requirements pertaining to Central Contractor Registration. (See 4.1102.)

18.103 Synopses of proposed contract actions.

Contracting officers need not submit a synopsis notice when there is an unusual and compelling urgency and the Government would be seriously injured if the agency complied with the notice time periods. (See 5.202(a)(2).)

18.104 Unusual and compelling urgency.

Agencies may limit the number of sources and full and open competition need not be provided for contracting actions involving urgent requirements. (See 6.302–2.)

18.105 Federal Supply Schedules (FSSs), multi-agency blanket purchase agreements (BPAs), and multi-agency indefinite delivery contracts.

Streamlined procedures and a broad range of goods and services may be available under Federal Supply Schedule contracts (see Subpart 8.4), multi-agency BPAs (See 8.405–3(a)(4)), or multi-agency, indefinite-delivery contracts (see 16.505(a)(7)). These contracting methods may offer agency advance planning, pre-negotiated line items, and special terms and conditions that permit rapid response.

18.106 Javits-Wagner-O'Day (JWOD) specification changes.

Contracting officers are not held to the notification required when changes in JWOD specifications or descriptions are required to meet emergency needs. (See 8.712(d).)

18.107 Qualifications requirements.

Agencies may determine not to enforce qualification requirements when an emergency exists. (See 9.206–1.)

18.108 Priorities and allocations.

The Defense Priorities and Allocations System (DPAS) supports authorized national defense programs and was established to facilitate rapid industrial mobilization in case of a national emergency. (See 11.6.)

18.109 Soliciting from a single source.

For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source under certain circumstances. (See 13.106–1(b).)

18.110 Oral requests for proposals.

Oral requests for proposals are authorized under certain conditions. (See 15.203(f).)

18.111 Letter contracts.

Letter contracts may be used when contract performance must begin immediately. (See 16.603.)

18.112 Interagency acquisitions under the Economy Act.

Interagency acquisitions are authorized under certain conditions. (See Subpart 17.5.)

18.113 Contracting with the Small Business Administration (The 8(a) Program).

Contracts may be awarded to the Small Business Administration (SBA) for performance by eligible 8(a) firms on either a sole source or competitive basis. (See Subpart 19.8.)

18.114 HUBZone sole source awards.

Contracts may be awarded to Historically Underutilized Business

Zone (HUBZone) small business concerns on a sole source basis. (See 19.1306.)

18.115 Service-disabled Veteran-owned Small Business (SDVOSB) sole source awards.

Contracts may be awarded to Service-disabled Veteran-owned Small Business (SDVOSB) concerns on a sole source basis. (See 19.1406.)

18.116 Overtime approvals.

Overtime approvals may be retroactive if justified by emergency circumstances. (See 22.103–4(i).)

18.117 Use of patented technology under the North American Free Trade Agreement.

Requirement to obtain authorization prior to use of patented technology may be waived in circumstances of extreme urgency or national emergency. (See 27.208.)

18.118 Bid guarantees.

The chief of the contracting office may waive the requirement to obtain a bid guarantee for emergency acquisitions when a performance bond or a performance bond and payment bond is required. (See 28.101–1(c).)

18.119 Advance payments.

Agencies may authorize advance payments to facilitate the national defense for actions taken under Public Law 85–804 (see Part 50, Extraordinary Contractual Actions). These advance payments may be made at or after award of sealed bid contracts, as well as negotiated contracts. (See 32.405.)

18.120 Assignment of claims.

The use of the no-setoff provision may be appropriate to facilitate the national defense in the event of a national emergency or natural disaster. (See 32.803(d).)

18.121 Electronic funds transfer.

Electronic funds transfer payments may be waived for acquisitions to support unusual and compelling needs or emergency acquisitions. (See 32.1103(e).)

18.122 Protest to GAO.

When urgent and compelling circumstances exist, agency protest override procedures allow the head of the contracting activity to determine that the contracting process may continue after GAO has received a protest. (See 33.104(b) and (c).)

18.123 Contractor rent-free use of Government property.

Rental requirements do not apply to items of Government production and research property that are part of a

general program approved by the Federal Emergency Management Agency and meet certain criteria. (See 45.404(a)(3) and (4).)

18.124 Extraordinary contractual actions.

Part 50 prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 (50 U.S.C. 1431-1434). This includes—

- (a) Amending contracts without consideration (see 50.302-1);
- (b) Correcting or mitigating mistakes in a contract (see 50.302-2); and
- (c) Formalizing informal commitments (See 50.302-3).

Subpart 18.2—Emergency Acquisition Flexibilities

18.201 Contingency operation.

(a) *Contingency operation* is defined in 2.101.

(b) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See 2.101 and 13.201(g).)

(c) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See 2.101.)

(d) *SF 44, Purchase Order-Invoice-Voucher*. The normal threshold for the use of the SF 44 is at or below the micro-purchase threshold. Agencies may, however, establish higher dollar limitations for purchases made to support a contingency operation. (See 13.306.)

(e) *Test program for certain commercial items*. The threshold limits authorized for use of the test program may be increased for acquisitions to support a contingency operation. (See 13.500(e).)

18.202 Defense or recovery from certain attacks.

(a) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See 2.101.)

(b) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or

services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See 2.101.)

(c) *Commercial items to facilitate defense and recovery*. Contracting officers may treat any acquisition of supplies or services as an acquisition of commercial items if the head of the agency determines the acquisition is to be used to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack. (See 12.102(f)(1) and 13.500(e).)

(d) *Test program for certain commercial items*. The threshold limits authorized for use of the test program may be increased when it is determined the acquisition is to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See 13.500(e).)

18.203 Incidents of national significance, emergency declaration, or major disaster declaration.

(a) *Authorized or required by statute*. Agencies may limit the use of full and open competition when statutes authorize or require that the acquisition be made through another agency or from a specified source. This includes the Robert T. Stafford Disaster Relief and Emergency Assistance Act. (See 6.302-5 and Subpart 26.2.)

(b) *Disaster or emergency assistance activities*. Preference will be given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. (See Subpart 26.2 and 6.302-5(b)(5).)

(c) *Ocean transportation by U.S. flag vessels*. The provisions of the Cargo Preference Act of 1954 may be waived in emergency situations. (See 47.502(c).)

18.204 Resources.

(a) *National Response Plan*. The National Response Plan (NRP) provides a single, comprehensive framework for the management of domestic incidents where Federal involvement is necessary as required by the Homeland Security Act of 2002 (Public Law 107-296). The NRP only applies to incidents of national significance, defined as an actual or potential high-impact event that requires a coordinated and effective response by an appropriate combination of Federal, State, local, tribal,

nongovernmental, and/or private-sector entities in order to save lives, minimize damage, and provide for long-term community recovery and mitigation activities. The Department of Homeland Security is responsible for the NRP. The NRP is available at http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0566.xml.

(b) [Reserved]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR—2006—0023]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-11; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005-11 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005-11 which precedes this document. These documents are also available via the Internet at <http://www.acquisition.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.