Collins CIV Cathy

From: Collins CIV Cathy
Sent: Friday, September 24, 2010 8:24 AM
To: Adkins SSgt Garvey M; Alexander MSgt Darrin T; Baker MSgt Daniel M; Boone GySgt Nicole C; Boyd MGySgt Bryan E; Britton GySgt Dewan C; Brunson CIV Janet C; Cerka CIV Frances C; Chase Capt Kenny K; Clark GySgt Frederick A; Coetzee CIV Allie; Corcoran LtCol Eric M; Crawford Civ Dale A; Dobbins GySgt Michael W; Drury CIV Deborah A; Gaylor CIV Sherry F; Gubitti Civ Cynthia A; Hake CIV Peggy L; Hart Capt Charles N; Henley CIV June R; Higa CIV Sakura K; Ingle Capt Steven L; Johnson CIV Clark W; Jones CIV Shakara M; Jones MSgt Donald J; King Maj Stephanie D; Knudsen CIV Deborah K; Leach CIV Andrea V; Lemmond CIV Barbara G; Long Capt Eric J; Lovett-Black Civ JoAnna; Matthews CIV Layton D; Mendez SSgt Gilbert; Michael Maj Ronnie D; Mohead MSgt Kacy M; Morris CIV Robert A; Mullen CIV Melvin T; Navarro GySgt Hector M; Owens SSgt Brad E; Patterson SSgt Brent J; Payne CIV Mark H; Pendley CIV Larry F; Polesnak Maj Stephanie M; Powell CIV Hollis H; Rabassi Maj Christopher E; Rego CIV Arthur J; Renfroe MSgt Telly J; Robinson LtCol Macon R (MEF FWD G-4); Schmid LtCol Steven J; Sherman Maj Brad J; Smith CIV Peggy L; Stahl Maj Scott A; Stewart GySgt Robert D; Stroh CIV Linda L; Toncu SSgt Cristian; Tuzon MSgt Norman (MEF FWD G-4); Washington CIV Connie A; Watts GySgt Will W; Lovett-Black Civ JoAnna
Cc: M_HQMC_LB; Romano CIV Mark; Oliver CIV R. Kaye; Daise CIV Stanley C
Subject: APM 10-20 Inflation Adjustment of Acquisition-Related Thresholds
Attachments: Federal Register Notice_Vol75_ No167_FAR Changes.pdf; Federal Register Notice_Vol75_ No147.pdf; MAPS Changes.docx
Signed By: cathy.collins@usmc.mil

All,

BACKGROUND: Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 requires adjustment of acquisition-related thresholds, with the exception of Davis-Bacon Act, Service Contract Act, and trade agreement thresholds, every five years. Accordingly, the applicable acquisition-related thresholds were recently reviewed and several thresholds were adjusted due to inflation. The new thresholds were released in the attached following two publications:

(1) Federal Register / Vol. 75, No. 147 / August 2, 2010; and
(2) Federal Register / Vol. 75, No. 167 / August 30, 2010

POLICY:

a. Effective 1 October 2010, all solicitations and any contracts to be awarded shall be in compliance with the new acquisition thresholds identified in the attached Federal Register notices. Significant changes reflected in these attachments are as follows:

(1) The simplified acquisition threshold (FAR 2.101) is raised from $100,000 to $150,000.
(2) Commercial items test program ceiling (FAR 13.500) is raised from $5,500,000 to $6,500,000.
(3) The cost or pricing data threshold (FAR 15.403-4) is raised from $650,000 to $700,000.
(4) The prime contractor subcontracting plan (FAR 19.702) floor is raised from $550,000 to $650,000 and the construction threshold of $1,000,000 increases to $1,500,000.
(5) Reporting of contract actions (DFARS 5.303) (CHINFO) is raised from $5,500,000 to $6,500,000.
(6) The threshold for placing FSS orders on a competitive basis (DFARS 208.405-70(b) & 208.405-70(c)) is raised from $100,000 to $150,000.
(7) The threshold for placing orders under multiple award contracts on a competitive basis (DFARS 216.505-70) is raised from $100,000 to $150,000.

b. The attached Federal Register notices also identify a number of threshold changes to FAR and DFARS provisions and clauses. As a result of these changes, the effective date of these

provisions and clauses is changed to "Oct 2010." Therefore, as of 1 October 2010, all solicitations and any contracts to be awarded shall incorporate, as applicable, the new FAR and DFARS provisions and clauses, dated "Oct 2010."

c. Changes to the Marine Corps Acquisition Procedures Supplement (MAPS) as a result of the threshold changes identified in the attached Federal Register notices are provided on the attached, "MAPS Changes", document. All solicitations and any contracts to be awarded shall be in compliance with these changes, which will be incorporated into the next MAPS release.

d. Thresholds in CMPG shall align to the revised thresholds identified in the attached Federal Register notices and the attached MAPS Changes document. The changes to CMPG reflecting these revised thresholds will be incorporated in the next CMPG version release.

PROCEDURES:

a. Comply with the new acquisition thresholds outlined in the attached Federal Register notices and as supplemented by the changes reflected in the attached "MAPS Changes" document.

b. Ensure the most current versions of any FAR and DFARS provisions/clauses are included in all solicitations and any contracts to be awarded.

Request this APM be disseminated as widely as possible to activity contracting personnel.

R/ cc

Cathy Collins
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Dated: August 18, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Amy G. Williams,

Acting Deputy Director, Defense Procurement and Acquisitions Policy (Defense Acquisition Regulations System).

Joseph A. Neurauter,

Deputy Associate Administrator and Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Sheryl J. Goddard,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2010–21024 Filed 8–27–10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 19, 22, 23, 28, 32, 36, 42, 50, and 52

[FAC 2005–45; FAR Case 2008–024; Item I; Docket 2010–0079, Sequence 1]

RIN 9000–AL51

Federal Acquisition Regulation; Inflation Adjustment of Acquisition—Related Thresholds

AGENCY: 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 implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 807 requires an adjustment every 5 years of acquisition-related thresholds for inflation using the Consumer Price Index (CPI) for all urban consumers, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. The Councils have also used the same methodology to adjust nonstatutory FAR acquisition-related thresholds in 2010.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–45, FAR case 2008–024.

SUPPLEMENTARY INFORMATION:

A. Background

The first review of acquisition-related thresholds to implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375) was conducted under FAR Case 2004–033 during FY 2005. The final rule for the first review was published in the **Federal Register** at 71 FR 57363, September 28, 2006. This is the second review of FAR acquisition-related thresholds. DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 75 FR 5716, February 4, 2010. The preamble to the proposed rule contained a detailed explanation of—

- What an acquisition-related threshold is;
- What acquisition-related thresholds are not subject to escalation adjustment under this case;
- How the Councils analyze statutory and nonstatutory acquisition-related thresholds; and
- The effect of this rule on the most heavily-used thresholds.

Eight respondents submitted comments on the proposed rule, which are addressed in the following section. The final rule has been coordinated with the Department of Labor and the Small Business Administration in areas of the regulation for which they are the lead agency. Any changes to Cost Accounting Standards thresholds will be dealt with under a separate case.

B. Analysis of Public Comments

1. Statutory Thresholds

a. All Statutory Thresholds

Comment: One respondent, while recognizing that this is a statutory requirement, believed that no inflation adjustments should be made at this time. The respondent views the threshold increases as a way to reduce Government oversight of Federal contracts and considers such reduction unwise, because of various congressional oversight hearings and reports of Inspectors General and the Government Accountability Office that have revealed "widespread systemic gaps in Government contracting oversight."

Response: As noted, this is a statutory requirement. Further, the intent is not to reduce Government oversight but to maintain the status quo, by adjusting thresholds to keep pace with inflation. If thresholds are not adjusted for inflation, the number of contracts subject to the acquisition-related threshold will continue to grow, because more and more contracts will be below the stated thresholds.

b. Prime Contractor Subcontracting Plan Thresholds (FAR 19.702)

Comment: One respondent stated that they were particularly pleased with the proposal to increase the threshold values in FAR part 19 relative to the need to submit an acceptable subcontracting plan. They consider the current threshold to be administratively burdensome. The respondent further recommended that the Councils should pursue legislative action to raise the threshold to a minimum of one million dollars.

Another respondent recommended increasing the prime contractor subcontracting plan threshold to $700,000, to be the same as the increased cost or pricing data threshold.

Response: The final rule raises the subcontracting threshold to $650,000, as required by the law that this case is implementing. Pursuing legislative changes is outside the scope of this case.

c. Miller Act (FAR 28.102 and 52.228–15)

Comment: Three respondents addressed the proposed increase in the Miller Act threshold. These respondents emphasized the importance of performance and payment bonds as a protection for subcontractors and taxpayers.

- One respondent stated that the law is "an unfortunate and contradictory statutory requirement." The respondent considered that the threshold increase will undermine the original protective purposes of the bonding requirements set forth in the Miller Act, because more Federal construction projects will be undertaken without the benefit of payment bond protection. In particular, this respondent noted that subcontractors are frequently small businesses, for whom lack of a payment bond may be disastrous. The respondent requested the Councils explain accurately to Congress the significant negative impact that such increases will have.
- Another respondent stated that the threshold increase is bad public policy, and the Councils should reconsider whether such thresholds are "acquisition-related thresholds" as contemplated by the Act.
- The third respondent urged the Councils not to increase the Miller Act surety bond threshold, but did not suggest rationale for noncompliance with the statutory requirement.

Response: The Councils do not agree that adjustment of thresholds for inflation will have the negative impact perceived by these respondents. As already stated, inflation adjustment of thresholds is a means of maintaining the status quo. It will not decrease the number of contracts that are subject to the Miller Act, but will prevent the relative number of contracts subject to the Miller Act from increasing. The rationale that there should be some level below which the Miller Act is not applicable is maintained by adjustment of the threshold for inflation. The law (40 U.S.C. 3132) provides alternate payment protection for contracts that exceed $30,000, so that contracts below the Miller Act threshold are not entirely without payment protection.

As to whether the Miller Act threshold is an acquisition-related threshold, this threshold clearly meets the definition that was set forth in the law, as consistently interpreted by the Councils since the enactment of the law in 2004. The law defines an acquisition-related threshold as a threshold that is set forth in law (the Miller Act), as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency. As this definition is applied to the Miller Act threshold, the Miller Act requires payment and performance bonds when agencies acquire construction that is valued at more than the Miller Act threshold (raised by this rule from $100,000 to $150,000).

2. Nonstatutory Thresholds

Comment: One respondent was particularly concerned about the proposed increase in nonstatutory thresholds. In particular, this respondent cited three examples of threshold increases which the respondent considered questionable:

- *Approval levels for limited source justifications at FAR 8.405–6.* The respondent stated that increasing such approval levels appears inconsistent with the President's March 4, 2009, Memorandum.
- *The threshold at FAR 22.1103 for use of the solicitation provision FAR 52.222–46, Evaluation of Compensation for Professional Employees.* The respondent stated that when contractors pay very low wages and benefits, work quality can suffer and the Government may bear hidden costs because of the need to provide income assistance to low income families.
- *The threshold for subcontracting plans governed by FAR 19.702.* The respondent stated that the increase of this threshold would have a detrimental impact, especially on small businesses.

Response: Although there is no statutory requirement to increase the nonstatutory thresholds, the same rationale applies as to why escalation to adjust for inflation is a good idea. If there was any rationale for the level at which the thresholds were originally put in place by policy, the thresholds will become further and further out of line with the original policy decision if they are left unchanged. In addition to this general rationale, the Councils add the following two particular responses:

- In particular, the approval levels for limited source justifications at FAR 8.405–6 were selected to be consistent with the statutory thresholds at FAR 6.304(a). Therefore, it is reasonable to escalate these thresholds the same as the thresholds at FAR 6.304(a) to maintain the consistency.
- Although the respondent cited the threshold for subcontracting plans governed by FAR 19.702 as an example of a nonstatutory threshold, this threshold is actually a statutory threshold (15 U.S.C. 637(d)(4)), which must therefore be escalated.

3. Increase Penalties

Comment: One respondent recommended that the Councils should also increase the maximum dollar amount of penalties when increasing the acquisition-related threshold contained in the same statute. According to the respondent, by not increasing the penalty for failure to disclose unallowable activities, the Councils are providing contractors a greater incentive to violate the law.

Response: The penalties are set by statute. The law that the FAR Council is implementing did not authorize the FAR Council to increase penalties, only the acquisition-related thresholds.

4. Implementation

Two Government employees provided comments relating to the implementation of the rule.

a. Provide a Matrix

Comment: One respondent requested a matrix of the changes in order to save everyone from having to do the analysis and matrix development. (Although the comment was submitted in response to the FAR rule, the respondent requested that the Councils provide a Defense Federal Acquisition Regulation Supplement (DFARS) matrix, so this may have been intended as a comment on the DFARS inflation adjustment rule.)

Response: In 2006, the URL of a matrix was provided at FAR 1.109(d). Likewise, the current matrix is again available and the Councils have provided a revised Web address to access it.

b. Effective Date

One respondent expressed concern over the large number of systems changes that this rule will require and the difficulty of implementation in a short period of time. The respondent recommended providing ample time between the release of firm requirements and the required implementation.

Response: Although the Councils hoped to publish this final rule in time to allow 60 days for implementation, they were unable to meet that goal. The effective date of October 1, 2010, allows only a little more than the standard 30 days for implementations, but this effective date is consistent with the statutory requirements and the desired procedures for implementation of changes that impact the Federal Procurement Data System at the beginning of the fiscal year.

C. Changes Between the Proposed Rule and the Final Rule

Although there were no changes between the proposed rule and the final rule as the result of public comments, some of the thresholds changed due to lower inflation than was projected at the time of publication of the proposed rule. The proposed rule was based on a projected consumer price index (CPI) of 222 in April 2010. The final rule is based on an actual CPI of 217.631 through the end of March 2010. The end of March, 6 months before the effective date of the rule, is used as the cutoff in order to allow time for approval and publication of the final rule.

Because the actual CPI is more than 4 points lower than the projected CPI, proposed thresholds of at least $13 million are generally proportionally lower. Thresholds of less than $13 million were generally unchanged, due to rounding.

The effect of the final rule on heavily-used thresholds is the same as stated in the preamble to the proposed rule:

- The micro-purchase base threshold of $3,000 (FAR 2.101) is not changed.
- The simplified acquisition threshold (FAR 2.101) is raised from $100,000 to $150,000.
- The FedBizOpps preaward and post-award notices (FAR part 5) remain at $25,000 because of trade agreements.
- Commercial items test program ceiling (FAR 13.500) is raised from $5,500,000 to $6,500,000.

• The cost or pricing data threshold (FAR 15.403–4) is raised from $650,000 to $700,000.

• The prime contractor subcontracting plan (FAR 19.702) floor is raised from $550,000 to $650,000, and the construction threshold of $1,000,000 increases to $1,500,000.

This final rule is a significant regulatory action and, therefore, was 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.

D. 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 adjustment of acquisition-related thresholds for inflation maintains the status quo. The Councils note that the set-aside threshold of $100,000 increases to $150,000, which is not a detriment to small business. Although several respondents were concerned about the impact of some of the threshold changes on small businesses (see comment and response at B.1.c. and B.2.), the Councils reiterate that adjusting a threshold in an amount sufficient to keep pace with current inflation is neutral in impact on small businesses because it just maintains the status quo.

E. 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 Numbers:

• 9000–0006, Subcontracting Plans/ Subcontracting Report for Individual Contract (SF 294)—FAR Sections Affected: Subpart 19.7 and 52.219–9;

• 9000–0007, Summary Subcontract Report—FAR Sections Affected: Subpart 19.7, 53.219, and SF 295;

• 9000–0013, Cost or Pricing Data Exemption—FAR Sections Affected: Subparts 15.4, 42.7, 52.214–28, 52.215–12, 52.215–13, 52.215–20, and 52.215–21;

• 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data—FAR Sections Affected: 3.103 and 3.302;

• 9000–0022, Duty-Free Entry—FAR 48 CFR 52.225–8—FAR Section Affected: 52.225–8;

• 9000–0026, Change Order Accounting—FAR Sections Affected: 43.205(f) and 52.243–6;

• 9000–0027, Value Engineering Requirements—FAR Sections Affected: Subparts 48.1 and 48.2, 52.248–1, 52.248–2, and 52.248–3;

• 9000–0034, Examination of Records 5 CFR 1320.5(b) by Comptroller General and Contract Audit—FAR Sections Affected: 52.215–2, 52.212–5, and 52.214–26;

• 9000–0045, Bid, Performance, and Payment Bonds—FAR Sections Affected: Subparts 28.1 and 28.2, 52.228–1, 52.228–2, 52.228–13, 52.228–15, and 52.228–16;

• 9000–0058, Schedules for Construction Contracts—FAR Section Affected: 52.236–15;

• 9000–0060, Accident Prevention 48 CFR 52.236–13, Plans and Recordkeeping—FAR Section Affected: 52.236–13;

• 9000–0066, Professional Employee Compensation Plan—FAR Sections Affected: Subpart 22.11 and 52.222–46;

• 9000–0073, Advance Payments—FAR Sections Affected: Subpart 32.4 and 52.232–12;

• 9000–0077, Quality Assurance Requirements—FAR Sections Affected: Subparts 46.1 through 46.3, 52.246–2 through 52.246–8, 52.246–10, 52.246–12, and 52.246–15;

• 9000–0080, Integrity of Unit Prices—FAR Sections Affected: 15.408(f) and 52.215–14;

• 9000–0091, Anti-Kickback Procedures—FAR Sections Affected: 3.502, and 52.203–7;

• 9000–0094, Debarment and Suspension, FAR Sections Affected: 9.1, 9.4, 52.209–5, and 52.212–3(h);

• 9000–0101, Drug-Free Workplace—FAR Section Affected: 52.223–6(b)(5);

• 9000–0115, Notification of Ownership Changes—FAR Sections Affected: 15.408(k) and 52.215–19;

• 9000–0133, Defense Production Act Amendments—FAR Sections Affected: 34.1 and 52.234–1;

• 9000–0134, Environmentally Sound Products—FAR Sections Affected: 23.406 and 52.223–4;

• 9000–0135, Prospective Subcontractor Requests for Bonds, FAR 28.106–4(b), 52.228–12;

• 1215–0072, OFCCP Recordkeeping and Reporting Requirements—Supply and Service; and

• 1215–0119, Requirements of a Bona Fide Thrift or Savings Plan (29 CFR part 547) and Requirements of a Bona Fide Profit-Sharing Plan or Trust (29 CFR part 549).

List of Subjects in 48 CFR Parts 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 19, 22, 23, 28, 32, 36, 42, 50, and 52

Government procurement.

Dated: August 18, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 19, 22, 23, 28, 32, 36, 42, 50, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 19, 22, 23, 28, 32, 36, 42, 50, and 52 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

1.109 [Amended]

■ 2. Amend section 1.109 by removing from paragraph (d) "*http://acquisition.gov/far/facsframe.html*" and adding "*http://www.regulations.gov* (search FAR case 2008–024)" in its place.

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 3. Amend section 2.101 in paragraph (b)(2) by—

■ a. Amending the definition "Major system" by removing from paragraph (1) "$173.5 million" and adding "$189.5 million", and removing "$814.5 million" and adding "$890 million"; and removing from paragraph (2) "$1.8 million" and adding "$2 million" in its place;

■ b. Amending the definition "Micro-purchase threshold" by removing from paragraph (3)(ii) "$25,000" and adding "$30,000" in its place; and

■ c. Amending the definition "Simplified acquisition threshold" by removing from the introductory paragraph "$100,000" and adding "$150,000" in its place; and removing from paragraph (1) "$250,000" and adding "$300,000" in its place.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.502–2 [Amended]

■ 4. Amend section 3.502–2 by removing from the introductory text of paragraph (i) "$100,000" and adding "$150,000" in its place.

3.804 [Amended]

■ 5. Amend section 3.804 by removing "$100,000" and adding "$150,000" in its place.

3.808 [Amended]

■ 6. Amend section 3.808 by removing from paragraphs (a) and (b) "$100,000" and adding "$150,000" in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.101 [Amended]

■ 7. Amend section 5.101 by removing from the introductory text of paragraph (a)(2) "$10,000" and adding "$15,000" in its place.

5.205 [Amended]

■ 8. Amend section 5.205 by removing from paragraph (d)(2) "$10,000" and adding "$15,000" in its place.

5.206 [Amended]

■ 9. Amend section 5.206 by—

■ a. Removing from paragraph (a)(1) "$100,000" and adding "$150,000" in its place; and

■ b. Removing from paragraph (a)(2) "$100,000" and adding "$150,000" in its place, and removing "$10,000" and adding "$15,000" in its place.

5.303 [Amended]

■ 10. Amend section 5.303 by removing from the introductory text of paragraph (a) "$3.5 million" and adding "$4 million" in its place.

PART 6—COMPETITION REQUIREMENTS

6.304 [Amended]

■ 11. Amend section 6.304 by—

■ a. Removing from paragraph (a)(1) "$550,000" and adding "$650,000" in its place;

■ b. Removing from paragraph (a)(2) "$550,000" and adding "$650,000" in its place, and removing "$11.5 million" and adding "$12.5 million" in its place;

■ c. Removing from the introductory text of paragraph (a)(3) "$11.5 million" and adding "$12.5 million" in its place, removing "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place; and

■ d. Removing from paragraph (a)(4) "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place.

PART 7—ACQUISITION PLANNING

7.104 [Amended]

■ 12. Amend section 7.104 by—

■ a. Removing from paragraph (d)(2)(i)(A) "$7.5 million" and adding "$8 million" in its place;

■ b. Removing from paragraph (d)(2)(i)(B) "$5.5 million" and adding "$6 million" in its place; and

■ c. Removing from paragraph (d)(2)(i)(C) "$2 million" and adding "$2.5 million" in its place.

7.107 [Amended]

■ 13. Amend section 7.107 by—

■ a. Removing from paragraph (b)(1) "$86 million" and adding "$94 million" in its place; and

■ b. Removing from paragraph (b)(2) "$8.6 million" and adding "$9.4 million" in its place, and removing "$86 million" and adding "$94 million" in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.405–6 [Amended]

■ 14. Amend section 8.405–6 by—

■ a. Removing from paragraph (h)(1) "$550,000" and adding "$650,000" in its place;

■ b. Removing from paragraph (h)(2) "$550,000" and adding "$650,000" in its place, and removing "$11.5 million" and adding "$12.5 million" in its place;

■ c. Removing from the introductory text of paragraph (h)(3) "$11.5 million" and adding "$12.5 million" in its place, removing "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place; and

■ d. Removing from paragraph (h)(4) "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.102 [Amended]

■ 15. Amend section 12.102 by removing from the introductory text of paragraph (f)(2) "$16 million" and adding "$17.5 million" in its place; and removing from paragraph (g)(1)(ii) "$27 million" and adding "$29.5 million" in its place.

12.203 [Amended]

■ 16. Amend section 12.203 by removing "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.000 [Amended]

■ 17. Amend section 13.000 by removing "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place.

13.003 [Amended]

■ 18. Amend section 13.003 by—

■ a. Removing from paragraph (b)(1) "$100,000" and adding "$150,000" in its place, and removing "$250,000" and adding "$300,000" in its place;

■ b. Removing from paragraph (c)(1)(ii) "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place; and

■ c. Removing from paragraph (g)(2) "$5.5 million" and adding "$6.5 million", and removing "$11 million" and adding "$12 million" in its place.

13.005 [Amended]

■ 19. Amend section 13.005 by removing from paragraph (a)(5) "$100,000" and adding "$150,000" in its place.

13.201 [Amended]

■ 20. Amend section 13.201 by removing from paragraph (g)(1)(ii) "$25,000" and adding "$30,000" in its place.

13.303–5 [Amended]

■ 21. Amend section 13.303–5 by—

■ a. Removing from paragraph (b)(1) "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place; and

■ b. Removing from paragraph (b)(2) "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place.

13.500 [Amended]

■ 22. Amend section 13.500 by—

■ a. Removing from paragraph (a) "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place; and

■ b. Removing from the introductory text of paragraph (e) "$11 million" and adding "$12 million" in its place.

13.501 [Amended]

■ 23. Amend section 13.501 by—

■ a. Removing from paragraph (a)(2)(i) "$100,000" and adding "$150,000" in its place, and removing "$550,000" and adding "$650,000" in its place;

■ b. Removing from paragraph (a)(2)(ii) "$550,000" and adding "$650,000" in its place, and removing "$11.5 million" and adding "$12.5 million" in its place;

■ c. Removing from paragraph (a)(2)(iii) "$11.5 million" and adding "$12.5 million" in its place, removing "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place; and

■ d. Removing from paragraph (a)(2)(iv) "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.304 [Amended]

■ 24. Amend section 15.304 by removing from paragraph (c)(4) "$550,000" and adding "$650,000" in its place, and by removing "$1,000,000" and adding "$1.5 million" in its place.

15.403–1 [Amended]

■ 25. Amend section 15.403–1 by removing from paragraph (c)(3)(iv) "$16 million" and adding "$17.5 million" in its place.

15.403–4 [Amended]

■ 26. Amend section 15.403–4 by removing from the introductory texts of paragraphs (a)(1) and (a)(1)(iii) "$650,000" and adding "$700,000" in its place.

15.404–3 [Amended]

■ 27. Amend section 15.404–3 by removing from paragraph (c)(1)(i) "$11.5 million" and adding "$12.5 million" in its place.

15.407–2 [Amended]

■ 28. Amend section 15.407–2 by removing from paragraph (c)(1) and the introductory text of paragraph (c)(2) "$11.5 million" and adding "$12.5 million" in its place.

15.408 [Amended]

■ 29. Amend section 15.408 in Table 15–2, "II. Cost Elements" which follows paragraph (n), by removing from paragraph "A(2)" "$11.5 million" and adding "$12.5 million" in its place.

PART 16—TYPES OF CONTRACTS

16.206–2 [Amended]

■ 30. Amend section 16.206–2 by removing from the introductory paragraph "$100,000" and adding "$150,000" in its place.

16.206–3 [Amended]

■ 31. Amend section 16.206–3 by removing from paragraph (a) "$100,000" and adding "$150,000" in its place.

16.207–3 [Amended]

■ 32. Amend section 16.207–3 by removing from paragraph (d) "$100,000" and adding "$150,000" in its place.

16.503 [Amended]

■ 33. Amend section 16.503 by removing from paragraph (b)(2) "$100 million" and adding "$103 million" in its place; and removing from paragraph (d)(1) "$11.5 million" and adding "$12.5 million" in its place.

16.504 [Amended]

■ 34. Amend section 16.504 by removing from the introductory texts of paragraphs (c)(1)(ii)(D)(*1*) and (c)(1)(ii)(D)(*3*) "$100 million" and adding "$103 million" in its place; and removing from the introductory text of paragraph (c)(2)(i) "$11.5 million" and adding "$12.5 million" in its place.

16.506 [Amended]

■ 35. Amend section 16.506 by removing from paragraphs (f) and (g) "$11.5 million" and adding "$12.5 million" in its place.

PART 17—SPECIAL CONTRACTING METHODS

17.108 [Amended]

■ 36. Amend section 17.108 by removing from paragraph (a) "$11.5 million" and adding "$12.5 million" in its place; and removing from paragraph (b) "$114.5 million" and adding "$125 million" in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.502–2 [Amended]

■ 37. Amend section 19.502–2 by—

■ a. Removing from paragraph (a) "$100,000" and adding "$150,000" in its place each time it appears (twice), and removing "$250,000" and adding "$300,000" in its place; and

■ b. Removing from paragraph (b) "$100,000" and adding "$150,000" in its place.

19.508 [Amended]

■ 38. Amend section 19.508 by removing from paragraph (e) "$100,000" and adding "$150,000" in its place.

19.702 [Amended]

■ 39. Amend section 19.702 by—

■ a. Removing from paragraph (a)(1) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place; and

■ b. Removing from paragraph (a)(2) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place.

19.704 [Amended]

■ 40. Amend section 19.704 by removing from paragraph (a)(9) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place.

19.708 [Amended]

■ 41. Amend section 19.708 by removing from paragraph (b)(1) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place.

19.805–1 [Amended]

■ 42. Amend section 19.805–1 by removing from paragraph (a)(2) "$5.5 million" and adding "$6.5 million" in its place, and removing "$3.5 million" and adding "$4 million" in its place.

19.1202–2 [Amended]

■ 43. Amend section 19.1202–2 by removing from paragraph (a) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place.

19.1306 [Amended]

■ 44. Amend section 19.1306 by removing from paragraph (a)(2)(i) "$5.5 million" and adding "$6.5 million" in its place; and removing from paragraph (a)(2)(ii) "$3.5 million" and adding "$4 million" in its place.

19.1406 [Amended]

■ 45. Amend section 19.1406 by removing from paragraph (a)(2)(i) "$5.5 million" and adding "$6 million" in its place; and removing from paragraph (a)(2)(ii) "$3 million" and adding "$3.5 million" in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.305 [Amended]

■ 46. Amend section 22.305 by removing from paragraph (a) "$100,000" and adding "$150,000" in its place.

22.602 [Amended]

■ 47. Amend section 22.602 by removing "$10,000" and adding "$15,000" in its place.

22.603 [Amended]

■ 48. Amend section 22.603 by removing from paragraph (b) "$10,000" and adding "$15,000" in its place.

22.605 [Amended]

■ 49. Amend section 22.605 by removing from paragraphs (a)(1), (a)(2), (a)(3), and (a)(5) "$10,000" and adding "$15,000" in its place each time it appears (six times).

22.1103 [Amended]

■ 50. Amend section 22.1103 by removing "$550,000" and adding "$650,000" in its place.

22.1402 [Amended]

■ 51. Amend section 22.1402 by removing from paragraph (a) "$10,000" and adding "$15,000" in its place.

22.1408 [Amended]

■ 52. Amend section 22.1408 by removing from the introductory text of paragraph (a) "$10,000" and adding "$15,000" in its place.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.406 [Amended]

■ 53. Amend section 23.406 by removing from paragraph (d) "$100,000" and adding "$150,000" in its place.

PART 28—BONDS AND INSURANCE

28.102–1 [Amended]

■ 54. Amend section 28.102–1 by removing from paragraphs (a) and (b)(1) "$100,000" and adding "$150,000" in its place.

28.102–2 [Amended]

■ 55. Amend section 28.102–2 by removing from the headings of paragraphs (b) and (c) "*$100,000*" and adding "*$150,000*" in its place.

28.102–3 [Amended]

■ 56. Amend section 28.102–3 by removing from paragraphs (a) and (b) "$100,000" and adding "$150,000" in its place.

PART 32—CONTRACT FINANCING

32.404 [Amended]

■ 57. Amend section 32.404 by removing from paragraph (a)(7)(i) "$10,000" and adding "$15,000" in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.501 [Amended]

■ 58. Amend section 36.501 by removing from paragraph (b) "$1,000,000" and adding "$1.5 million" in its place each time it appears (twice).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.709 [Amended]

■ 59. Amend section 42.709 by removing from paragraph (b) "$650,000" and adding "$700,000" in its place.

42.709–6 [Amended]

■ 60. Amend section 42.709–6 by removing "$650,000" and adding "$700,000" in its place.

42.1502 [Amended]

■ 61. Amend section 42.1502 by removing from paragraph (e) "$550,000" and adding "$650,000" in its place each time it appears (twice).

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

50.102–1 [Amended]

■ 62. Amend section 50.102–1 by removing from paragraph (b) "$55,000" and adding "$65,000" in its place.

50.102–3 [Amended]

■ 63. Amend section 50.102–3 by removing from paragraph (b)(4) "$28.5 million" and adding "$31.5 million" in its place; and removing from paragraphs (e)(1)(i) and (e)(1)(ii) "$55,000" and adding "$65,000" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–7 [Amended]

■ 64. Amend section 52.203–7 by removing from the clause heading "(July 1995)" and adding "(Oct 2010)" in its place; and removing from paragraph (c)(5) "$100,000" and adding "$150,000" in its place.

52.203–12 [Amended]

■ 65. Amend section 52.203–12 by removing from the clause heading "(Sep 2007)" and adding "(Oct 2010)" in its place; and removing from paragraphs (g)(1) and (g)(3) "$100,000" and adding "$150,000" in its place.

52.204–8 [Amended]

■ 66. Amend section 52.204–8 by removing from the provision heading "(Feb 2009)" and adding "(Oct 2010)" in its place; and removing from paragraph (c)(1)(ii) "$100,000" and adding "$150,000" in its place.

52.212–3 [Amended]

■ 67. Amend section 52.212–3 by removing from the provision heading "(Aug 2009)" and adding "(Oct 2010)" in its place; and removing from paragraph (e) "$100,000" and adding "$150,000" in its place.

52.212–5 [Amended]

■ 68. Amend section 52.212–5 by—

■ a. Removing from the clause heading "(Jul 2010)" and adding "(Oct 2010)" in its place;

■ b. Removing from paragraph (b)(12)(i) "(Apr 2008)" and adding "(Oct 2010)" in its place;

■ c. Removing from paragraph (b)(25) "(Jun 1998)" and adding "(Oct 2010)" in its place;

■ d. Removing from paragraph (e)(1)(ii) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place;

■ e. Removing from paragraph (e)(1)(vi) "(Jun 1998)" and adding "(Oct 2010)" in its place; and

■ f. In Alternate II by—

■ 1. Removing from the Alternate heading "(*Apr 2010*)" and adding "(*Oct 2010*)" in its place;

■ 2. Removing from paragraph (e)(1)(ii)(C) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place; and

■ 3. Removing from paragraph (e)(1)(ii)(F) "(June 1998)" and adding "(Oct 2010)" in its place.

52.213–4 [Amended]

■ 69. Amend section 52.213–4 by—

■ a. Removing from the clause heading "(Jul 2010)" and adding "(Oct 2010)" in its place;

■ b. Removing from paragraph (a)(2)(vii) "(Jun 2010)" and adding "(Oct 2010)" in its place;

■ c. Removing from paragraph (b)(1)(ii) "(Dec 1996)" and adding "(Oct 2010)" in its place, and removing "$10,000" and adding "$15,000" in its place; and

■ d. Removing from paragraph (b)(1)(iv) "(June 1998)" and adding "(Oct 2010)" in its place, and removing "$10,000" and adding "$15,000" in its place.

52.219–9 [Amended]

■ 70. Amend section 52.219–9 by—

■ a. Removing from the clause heading "(Jul 2010)" and adding "(Oct 2010)" in its place;

■ b. Removing from paragraph (d)(9) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place;

■ c. Removing from the introductory text of paragraph (d)(11)(iii) "$100,000" and adding "$150,000" in its place; and

■ d. Removing from paragraph (l)(2)(i)(C) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place.

52.222–20 [Amended]

■ 71. Amend section 52.222–20 by removing from the clause heading "(Dec 1996)" and adding "(Oct 2010)" in its place; and removing from the introductory paragraph "$10,000" and adding "$15,000" in its place.

52.222–36 [Amended]

■ 72. Amend section 52.222–36 by removing from the clause heading "(Jun 1998)" and adding "(Oct 2010)" in its place; and removing from paragraph (d) "$10,000" and adding "$15,000" in its place.

52.225–8 [Amended]

■ 73. Amend section 52.225–8 by removing from the clause heading "(Feb 2000)" and adding "(Oct 2010)" in its place; and removing from the introductory texts of paragraphs (c)(1)

and (j)(2) "$10,000" and adding "$15,000" in its place.

52.228–15 [Amended]

■ 74. Amend section 52.228–15 by removing from the clause heading "(Nov 2006)" and adding "(Oct 2010)" in its place; and removing from the introductory text of paragraph (b) "$100,000" and adding "$150,000" in its place.

52.244–6 [Amended]

■ 75. Amend section 52.244–6 by—

■ a. Removing from the clause heading "(Jun 2010)" and adding "(Oct 2010)" in its place;

■ b. Removing from paragraph (c)(1)(iii) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place; and

■ c. Removing from paragraph (c)(1)(vi) "(Jun 1998)" and adding "(Oct 2010)" in its place.

52.248–1 [Amended]

■ 76. Amend section 52.248–1 by removing from the clause heading "(Feb 2000)" and adding "(Oct 2010)" in its place; and removing from paragraph (l) "$100,000" and adding "$150,000" in its place.

52.248–3 [Amended]

■ 77. Amend section 52.248–3 by removing from the clause heading "(Sep 2006)" and adding "(Oct 2010)" in its place; and removing from paragraph (h) "$55,000" and adding "$65,000" in its place.

[FR Doc. 2010–21025 Filed 8–27–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52

[FAC 2005–45; FAR Case 2005–036; Item II; Docket 2007–0001, Sequence 15]

RIN 9000–AK74

Federal Acquisition Regulation; Definition of Cost or Pricing Data

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 clarify the distinction between "certified cost or pricing data" and "data other than certified cost or pricing data", and to clarify requirements for submission of cost or pricing data.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–45, FAR case 2005–036.

SUPPLEMENTARY INFORMATION:

A. Background

Subpart 15.4 of the FAR describes the contracting officer's responsibility to purchase supplies and services at fair and reasonable prices and the use of data and information in meeting this requirement. This subpart incorporates the requirements of the Truth In Negotiations Act (TINA), 10 U.S.C. 2306a and 41 U.S.C. 254b, which address the requirements for the submission of cost or pricing data and the circumstances under which a contractor must certify to their accuracy, completeness, and currency.

The Councils believe that the implementation of TINA in FAR subpart 15.4 is not sufficiently clear. In particular, there is confusion regarding the right of the Government to request "data other than certified cost or pricing data," the obligation of the offeror to provide this data, and the definition of this term.

This lack of clarity is due, in large part, to definitions that overlap and are not identical to TINA. For example, the term "cost or pricing data" is defined in the FAR to mean certified cost or pricing data, whereas TINA does not make certification part of the definition of this term. This regulatory refinement has led to confusion regarding the level of information that a contracting officer may request to establish fair and reasonable pricing including a misunderstanding by some that the data elements that comprise cost or pricing data cannot be requested by the Government unless the data are required by law to be submitted to the contracting officer in a certified form. This confusion has been exacerbated by the FAR's use of the phrase "information other than cost or pricing data," which has made it difficult for contracting officers to understand the circumstances when data other than certified cost or pricing data should be obtained to protect the Government from paying unreasonable prices.

Even the basic articulation of policy regarding the use of data to establish the fairness and reasonableness of offered prices in the introductory paragraph of FAR 15.402(a) has lacked a certain level of clarity that creates uncertainty. For many years, this paragraph has appropriately cautioned contracting officers not to obtain more information than is necessary—and the FAR must continue to do so. However this paragraph should also, but currently does not, expressly mention the underlying statutory authority to collect "data other than certified cost or pricing data." Because of this omission, some contracting officers may be under the misperception that there is a greater responsibility to avoid asking unnecessarily for the submission of cost or pricing data than there is, in the first instance, to determine whether and how much of this data may be required, in a given case, to establish price fairness and reasonableness. In fact, both responsibilities—*i.e.*, obtaining data that are adequate for evaluating the reasonableness of the price and taking appropriate care not to ask for more data than is necessary—are inextricably interrelated and equally important. As such, the FAR needs to communicate this message more clearly.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 20092, April 23, 2007, to revise the FAR definition of "cost or pricing data"; change the term "information other than cost or pricing data" to "data other than certified cost or pricing data"; add a definition of "certified cost or pricing data" to make the terms and definitions consistent with TINA and more understandable to the general reader; change terminology throughout the FAR; and clarify the need for contracting officers to obtain "data other than certified cost or pricing data" when there is no other means to determine fair and reasonable pricing during price analysis.

Based on comments received on the proposed rule, a public meeting held on November 1, 2007, and additional deliberations (which are all discussed in greater detail below), the Councils have adopted a final rule that—

• Clarifies terminology used in the FAR to make it consistent with TINA, resulting in (i) refinements to the regulatory definition of cost or pricing data, (ii) the addition of a definition for "certified cost or pricing data," (iii) the addition of a definition for "data other than certified cost or pricing data," and

WCS licensees that intend to modify an existing base station must, before commencing such modified operation, provide 5 business days prior notice to all SDARS licensees. For the purposes of this section, a business day is defined by § 1.4(e)(2) of this chapter.

(c) *Contents of notice.* (1) Notification must be written (*e.g.*, certified letter, fax, or e-mail) and include the licensee's name, and the name, address, and telephone number of its coordination representative, unless the SDARS licensee and all potentially affected WCS licensees reach a mutual agreement to provide notification by some other means. WCS licensees and SDARS licensees may establish such a mutually agreeable alternative notification mechanism without prior Commission approval, provided that they comply with all other requirements of this section.

(2) Regardless of the notification method, it must specify relevant technical details, including, at a minimum:

(i) The coordinates of the proposed base station to an accuracy of no less than ±1 second latitude and longitude;

(ii) The proposed operating power(s), frequency band(s), and emission(s);

(iii) The antenna center height above ground and ground elevation above mean sea level, both to an accuracy of no less than ±1 meter;

(iv) The antenna gain pattern(s) in the azimuth and elevation planes that include the peak of the main beam; and

(v) The antenna downtilt angle(s).

(3) A WCS licensee operating base stations must maintain an accurate and up-to-date inventory of its base stations, including the information set forth in § 27.72(c)(2), which shall be available upon request by the Commission.

(d) *Calculation of notice period.* Notice periods are calculated from the date of receipt by the licensee being notified. If notification is by mail, the date of receipt is evidenced by the return receipt on certified mail. If notification is by fax, the date of receipt is evidenced by the notifying party's fax transmission confirmation log. If notification is by e-mail, the date of receipt is evidenced by a return e-mail receipt. If the SDARS licensee and all potentially affected WCS licensees reach a mutual agreement to provide notification by some other means, that agreement must specify the method for determining the beginning of the notice period.

(e) *Duty to cooperate.* WCS licensees must cooperate in good faith in the selection and use of new station sites and new frequencies to reduce interference and make the most effective use of the authorized facilities. WCS licensees should provide SDARS licensees as much lead time as practicable to provide ample time to conduct analyses and opportunity for prudent base station site selection prior to WCS licensees entering into real estate and tower leasing or purchasing agreements. WCS licensees must have sufficient operational flexibility in their network design to implement one or more technical solutions to remedy harmful interference. Licensees of stations suffering or causing harmful interference must cooperate in good faith and resolve such problems by mutually satisfactory arrangements. If the licensees are unable to do so, the Wireless Telecommunications Bureau, in consultation with the Office of Engineering and Technology and the International Bureau, will consider the actions taken by the parties to mitigate the risk of and remedy any alleged interference. In determining the appropriate action, the Bureau will take into account the nature and extent of the interference and act promptly to remedy the interference. The Bureau may impose restrictions on WCS licensees, including specifying the transmitter power, antenna height, or other technical or operational measures to remedy the interference, and will take into account previous measures by the licensees to mitigate the risk of interference.

14. Section 27.73 is added to read as follows:

§ 27.73 WCS, AMT, and Goldstone coordination requirements.

This section requires Wireless Communications Services (WCS) licensees in the 2345–2360 MHz band to coordinate the deployment of base stations with Aeronautical Mobile Telemetry (AMT) facilities in the 2360–2395 MHz band; and to take all practicable steps necessary to minimize the risk of harmful interference to AMT facilities.

(a) Wireless Communications Service (WCS) licensees operating base stations in the 2345–2360 MHz band shall, prior to operation of such base stations, achieve a mutually satisfactory coordination agreement with the Aerospace and Flight Test Radio Coordinating Council (AFTRCC) for any AMT receiver facility within 45 kilometers or the radio line of sight, whichever distance is larger, of the intended WCS base station location. This coordination is necessary to protect AMT receive systems consistent with Recommendation ITU–R M.1459. The locations of the current and planned Federal and non-Federal AMT receiver sites may be obtained from AFTRCC.

(b) WCS licensees operating base stations in the 2305–2320 MHz band shall, prior to operation of such base stations, achieve a mutually satisfactory coordination agreement with the National Aeronautics and Space Administration (NASA) within 145 kilometers of the Goldstone, CA earth station site (35°25′33″ N, 116°53′23″ W).

(c) After base station operations commence, upon receipt of a complaint of harmful interference, the WCS licensee(s) receiving the complaint, no matter the distance from the NASA Goldstone, CA earth station or from an AMT site, operating in the 2305–2320 or 2345–2360 MHz bands, respectively, shall take all practicable steps to immediately eliminate the interference.

(d) *Duty to cooperate.* WCS licensees, AFTRCC, and NASA must cooperate in good faith in the coordination and deployment of new facilities. WCS licensees must also cooperate in good faith in the selection and use of new station sites and new frequencies when within radio line of site of AMT receiver facilities to reduce the risk of harmful interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference must cooperate in good faith and resolve such problems by mutually satisfactory arrangements. If the licensees are unable to do so, the Wireless Telecommunications Bureau, in consultation with the Office of Engineering and Technology and the National Telecommunications and Information Administration may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations.

[FR Doc. 2010–18803 Filed 7–30–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Federal Acquisition Regulations System

48 CFR Parts 205, 207, 208, 209, 211, 215, 216, 217, 219, 225, 228, 232, 237, 246, 250, and 252

RIN 0750–AG41

Defense Federal Acquisition Regulation Supplement; Inflation Adjustment of Acquisition-Related Thresholds (DFARS Case 2009–D003)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the recurring requirement of section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 807 provides for adjustment every 5 years of statutory acquisition-related thresholds, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. This final rule also adjusts some non-statutory acquisition-related thresholds.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

The first review of DFARS acquisition-related thresholds to implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375) was conducted under DFARS Case 2004–D022 during fiscal year 2005. The final DFARS rule was published in the **Federal Register** on December 19, 2006 (71 FR 75891).

This is the second review of DFARS acquisition-related thresholds. DoD published a proposed rule on January 20, 2010 (75 FR 3187). The preamble to the proposed rule contained a detailed explanation of—

- What an acquisition-related threshold is;
- Which acquisition-related thresholds are not subject to escalation adjustment under this case; and
- How DoD analyzes statutory and non-statutory acquisition-related thresholds.

No public comments were received.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this rule will not have a substantial economic impact on small business because the adjustment of acquisition-related thresholds for inflation just maintains the status quo. No comments were received regarding impact on small business.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply. The proposed changes to the DFARS do not impose new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* They maintain the following information collection requirements at the status quo by adjusting the thresholds for inflation:

0704–0229—Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and Related Clauses at 252.225. (DFARS 252.225–7003, 252.225–7004, 252.225–7006)

0704–0187—Information Collection in Support of the DoD Acquisition Process (Solicitation Phase) (DFARS 252.209–7001 and 252.209–7004)

List of Subjects in 48 CFR Parts 205, 207, 208, 209, 211, 215, 216, 217, 219, 225, 228, 232, 237, 246, 250, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 205, 207, 208, 209, 211, 215, 216, 217, 219, 225, 228, 232, 237, 246, 250, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 205, 207, 208, 209, 211, 215, 216, 217, 219, 225, 228, 232, 237, 246, 250, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 205—PUBLICIZING CONTRACT ACTIONS

§ 205.303 [Amended]

■ 2. Section 205.303 is amended by removing "$5.5 million" and adding in its place "$6.5 million" in the following places:

■ a. In paragraph (a)(i) introductory text, in the first and second sentences;

■ b. In paragraph (a)(i)(A), in the second sentence; and

■ c. In paragraph (a)(i)(B), in the first and second sentences.

PART 207—ACQUISITION PLANNING

207.170–3 [Amended]

■ 3. Section 207.170–3 is amended in paragraph (a) introductory text by removing "$5.5 million" and adding in its place "$6 million".

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.405–70 [Amended]

■ 4. Section 208.405–70 is amended by removing "$100,000" and adding in its place "$150,000" in the following places:

■ a. Paragraph (b) in the introductory text; and

■ b. Paragraph (c) in the introductory text.

PART 209—CONTRACTOR QUALIFICATIONS

209.104–1 [Amended]

■ 5. Section 209.104–1 is amended in paragraph (g)(i)(A) introductory text by removing "$100,000" and adding in its place "$150,000".

209.104–70 [Amended]

■ 6. Section 209.104–70 is amended in paragraph (a) by removing "$100,000" and adding in its place "$150,000".

209.409 [Amended]

■ 7. Section 209.409 is amended by removing "$100,000" and adding in its place "$150,000".

PART 211—DESCRIBING AGENCY NEEDS

211.503 [Amended]

■ 8. Section 211.503 is amended in paragraph (b), in the first and second sentences, by removing "$550,000" and adding in its place "$650,000".

PART 215—CONTRACTING BY NEGOTIATION

215.407–2 [Amended]

■ 9. Section 215.407–2 is amended in paragraph (e)(1) by removing "$1 million" and adding in its place "$1.5 million".

PART 216—TYPES OF CONTRACTS

216.505–70 [Amended]

■ 10. Section 216.505–70 is amended by removing "$100,000" and adding in its place "$150,000" in the following places:

■ a. In paragraph (a)(2);

■ b. In paragraph (b) introductory text; and

■ c. In paragraph (c) introductory text.

PART 217—SPECIAL CONTRACTING METHODS

■ 11. Section 217.170 is amended by revising paragraph (e)(1)(i) to read as follows:

217.170 General.

* * * * *

(e)(1) * * *

(i) Exceed $500 million for supplies (see 217.172(d); and 217.172(f)(3)) or $625.5 million for services (see 217.171(a)(6);

* * * * *

217.171 [Amended]

■ 12. Section 217.171 is amended in paragraph (a)(6) by removing "$572.5 million" and adding in its place "$625.5 million".

PART 219—SMALL BUSINESS PROGRAMS

■ 13. Section 219.201 is amended by revising paragraph (d)(10)(A) to read as follows:

219.201 General policy.

(d) * * *

(10) * * *

(A) Reviewing and making recommendations for all acquisitions (including orders placed against Federal Supply Schedule contracts) over $10,000, except those under the simplified acquisition threshold that are totally set aside for small business concerns in accordance with FAR 19.502–2. Follow the procedures at PGI 219.201(d)(10) regarding such reviews.

* * * * *

219.502–1 [Amended]

■ 14. Section 219.502–1 is amended in paragraph (2) by removing "$300,000" and adding in its place "$350,000".

219.502–2 [Amended]

■ 15. Section 219.502–2 is amended in paragraphs (a)(ii) and (a)(iii) by:

■ a. Removing "$1 million" from paragraph (a)(ii) and adding in its place "$1.5 million"; and

■ b. Removing "$300,000" from paragraph (a)(iii) and adding in its place "$350,000".

219.1005 [Amended]

■ 16. Section 219.1005 is amended in paragraphs (a)(i)(B), (a)(i)(C), and (a)(i)(D) by removing "$300,000" and adding in its place "$350,000".

PART 225—FOREIGN ACQUISITION

225.103 [Amended]

■ 17. Section 225.103 is amended in paragraphs (a)(ii)(B)(2), (a)(ii)(B)(3), (b)(ii)(B), and (b)(ii)(C) by removing "$1,000,000" and adding in its place "$1.5 million".

225.7204 [Amended]

■ 18. Section 225.7204 is amended as follows:

■ a. In paragraphs (a) and (b) by removing "$11.5 million" and adding in its place "$12.5 million".

■ b. In paragraph (c) by removing "$550,000" and adding in its place "$650,000".

225.7703–2 [Amended]

■ 19. Section 225.7703–2 is amended in paragraphs (b)(2)(i) and (b)(2)(ii) by removing "$78.5 million" and adding in its place "$85.5 million".

PART 228—BONDS AND INSURANCE

228.102–1 [Amended]

■ 20. Section 228.102–1 is amended in paragraph (1) by removing "$100,000" and adding in its place "$150,000".

PART 232—CONTRACT FINANCING

232.404 [Amended]

■ 21. Section 232.404 is amended in paragraph (a)(9) by removing "$3,000" and adding in its place "the micro-purchase threshold".

232.502–1 [Amended]

■ 22. Section 232.502–1 is amended in paragraph (b)(1) by removing "$55,000" and adding in its place "$65,000".

PART 237—SERVICE CONTRACTING

237.170–2 [Amended]

■ 23. Section 237.170–2 is amended in paragraphs (a)(1) and (2) by removing "$78.5 million" and adding in its place "$85.5 million".

PART 246—QUALITY ASSURANCE

246.402 [Amended]

■ 24. Section 246.402 is amended in the introductory text by removing "$250,000" and adding in its place "$300,000".

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

250.102–1

■ 25. Section 250.102–1 is amended in paragraph (b) by removing "$55,000" and adding in its place "$65,000".

250.102–1–70 [Amended]

■ 26. Section 250.102–1–70 is amended in paragraph (b)(1) by removing "$55,000" and adding in its place "$65,000".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7000 [Amended]

■ 27. Section 252.211–7000 is amended as follows:

■ a. By revising the clause date to read "(OCT 2010)"; and

■ b. In paragraph (d) by removing "$1 million" and adding in its place "$1.5 million".

252.225–7003 [Amended]

■ 28. Section 252.225–7003 is as follows:

■ a. By revising the clause date to read "(OCT 2010)";

■ b. In paragraph (b)(1) by removing "$11.5 million" and adding in its place "$12.5 million"; and

■ c. In paragraph (b)(2)(i) by removing "$550,000" and adding in its place "$650,000".

252.225–7004 [Amended]

■ 29. Section 252.225–7004 is amended as follows:

■ a. By revising the clause date to read "(OCT 2010)"; and

■ b. In paragraph (b)(1) by removing "$550,000" and adding in its place "$650,000".

252.225–7006 [Amended]

■ 30. Section 252.225–7006 is amended as follows:

■ a. By revising the clause date to read "(OCT 2010)"; and

■ b. In paragraph (f)(1) by removing $550,000" and adding in its place $650,000".

252.249–7002 [Amended]

■ 31. Section 252.249–7002 is amended as follows:

■ a. By revising the clause date to read "(OCT 2010)";

■ b. In paragraph (d)(1) by removing $550,000" and adding in its place "$650,000"; and

■ c. In paragraphs (d)(2)(i) and (ii) by removing "$100,000" and adding in its place "$150,000".

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MAPS Changes (Revised)

(1) MAPS, Table of Contents, the title for 16.504-90 is changed from "(NMCARS) Limitation on single award task or delivery order contracts valued at or below $100M" to from "(NMCARS) Limitation on single award task or delivery order contracts valued at or below $103M."

(2) MAPS 1.603-2(b)(2), the threshold for FAR Part 13 Simplified Acquisitions, is changed from "up to $100,000" to "up to $150,000."

(3) MAPS 1.603-2(b)(2), the threshold for Firm-Fixed Price Delivery and Task Orders under FAR Part 8 and FAR Part 16, is changed from "up to $100,000" to "up to $150,000."

(4) MAPS 1.690(b)(3), the threshold for the CCO at each MCFCS office to establish business clearance review/approval levels which require approval by a Contracting Officer at least one level higher than the person responsible for negotiating the action, is changed from "greater than $100,000" to "greater than $150,000."

(5) MAPS 6.202, ADC, I&L (Contracts) approval of D&Fs to exclude sources from a contract, is changed from "not exceeding $78,500,000" to not exceeding $85,500,000."

(6) MAPS 6.304(a), Contracting Officer approval of justifications for other than full and open competition, is changed from "greater than $100,000 but not exceeding $550,000" to "greater than $150,000 but not exceeding $650,000."

(7) MAPS 6.304(b), Command Competition Advocate approval of justifications for other than full and open competition, is changed from "greater than $550,000 but not exceeding $11,500,000" to "greater than $650,000 but not exceeding $12.5 million."

(8) MAPS 6.304(c), ADC, I&L (Contracts) approval of justifications for other than full and open competition, is changed from "greater than $11,500,000 but not exceeding $78,500,000" to "greater than $12.5 million but not exceeding $85.5 million."

(9) MAPS 6.304(d), ASN (RD&A) approval of justifications for other than full and open competition, is changed from "greater than $78,500,000" to "greater than $85.5 million."

(10) MAPS 8.405-6(a), when limiting competition for an FSS order, the threshold for when to use the approval thresholds in MAPS 6.304 is changed from "greater than $100,000" to "greater than $150,000."

(11) MAPS 8.405-6(b), the Contracting Officer requirement to document in the contract file the J&A for limiting competition for an FSS order, is changed from "greater than the micro-purchase threshold up to an including $100,000" to "greater than the micro-purchase threshold up to and including $150,000."

(12) MAPS 15.406-90, the threshold at which Contract Officer are required to prepare a BCM, is changed from "greater than $100,000" to "greater than $150,000."

(13) MAPS 16.504(c), the threshold for a determination to award a task or delivery order contract to a single source, is changed from "greater than $100 million" to "greater than $103 million."

(14) MAPS 16.504-90, the title is changed from "(NMCARS) Limitation on single award task or delivery order contracts valued at or below $100M" to from "(NMCARS) Limitation on single award task or delivery order contracts valued at or below $103M."

(15) MAPS 16.504-90(a), the threshold for a D&F for a single award of task or delivery order contracts, is changed from "at or below $100,000,000" to "at or below $103,000,000."

(16) MAPS 16.504-90(b), the threshold for authorization of the conditions listed in FAR 16.504(c)(1)(ii)(D)(*1*) as rationale for single award of task or deliver orders, is changed from “greater than $100,000,000” to “greater than $103,000,000.”

(17) MAPS 16.504-90(c), the threshold for authorization of the conditions listed in FAR 16.504(c)(1)(ii)(D)(*1*) to also be used as rationale for lower thresholds of single award of task or delivery order contracts, is changed from “at or below $100,000,000” to “at or below 103,000,000.”

(18) MAPS 17.501, the definition of SAT is changed from “$100,000” to “$150,000.”

(19) MAPS 17.503(b)(1), the title “Assisted acquisitions made through Non-DoD agencies less than the SAT (currently $100K)” is changed to title “Assisted acquisitions made through Non-DoD agencies less than the SAT (currently $150K).”

(20) MAPS 25.103(a)(ii)(B)(2), ADC, I&L (Contracts) approval of determinations for Buy American Act exceptions due to public interest, is changed from “greater than the SAT but less than $1,000,000” to “greater than the SAT but less than $1.5 million.”

(21) MAPS 25.103(b)(ii)(B), CCO approval of determinations for Buy American Act exceptions due to nonavailability, is changed from “greater than the SAT but less than $1,000,000” to “greater than the SAT but less than $1.5 million.”

(22) MAPS 25.103(b)(ii)(C), DC, I&L or ADC, I&L (Contracts) approval of determinations for Buy American Act exceptions due to nonavailability, is changed from “greater than $1,000,000” to “greater than $1.5 million.”

(23) MAPS 37.503-100, table for acquisition strategies for service acquisitions that are not performance based, ADC, I&L (Contracts) or Designee approval, is changed from “>$5M to $78.5M” to “>$5M to $85.5M.”

(24) MAPS 37.503-100, table for acquisition strategies for service acquisitions that are not performance based, ASN(RD&A)/NSPE per DFARS 237.170-2(a)(2) approval, is changed from “>$78.5M to $500M” to “>$85.5M to $500M.”