

and other disaster or emergency relief activities established in accordance with 6 U.S.C. 796, Registry of Disaster Response Contractors. The Registry contains information on contractors who are willing to perform disaster or emergency relief activities within the United States and its outlying areas. The Registry is located at [www.ccr.gov](http://www.ccr.gov) and alternately through the FEMA website at <http://www.fema.gov/business/index.shtm>. (See 26.205).

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#### PART 4—ADMINISTRATIVE MATTERS

##### 4.1104 [Redesignated as 4.1105]

■ 3. Redesignate section “4.1104” as section “4.1105”, and add a new section “4.1104” to read as follows:

##### 4.1104 Disaster Response Registry.

Contracting officers shall consult the Disaster Response Registry at [www.ccr.gov](http://www.ccr.gov) when contracting for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

#### PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.103 by adding paragraph (v) to read as follows:

##### 7.103 Agency-head responsibilities.

\* \* \* \* \*

(v) Ensuring that contracting officers consult the Disaster Response Registry at [www.ccr.gov](http://www.ccr.gov) as a part of acquisition planning for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

#### PART 10—MARKET RESEARCH

■ 5. Amend section 10.000 by revising the second sentence to read as follows:

##### 10.000 Scope of part.

\* \* \* This part implements the requirements of 41 U.S.C. 253a(a)(1), 41 U.S.C. 264b, 10 U.S.C. 2377, and 6 U.S.C. 796.

■ 6. Amend section 10.001 by revising paragraph (a)(2)(v) to read as follows:

##### 10.001 Policy.

(a) \* \* \*

(2) \* \* \*

(v) On an ongoing basis, and to the maximum extent practicable, take advantage of commercially available market research methods in order to identify effectively the capabilities, of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the

requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. (See 26.205).

\* \* \* \* \*

#### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

##### 13.201 [Amended]

■ 7. Amend section 13.201 by removing from paragraph (d) “4.1104” and adding “4.1105” in its place.

#### PART 18—EMERGENCY ACQUISITIONS

■ 8. Revise section 18.102 to read as follows:

##### 18.102 Central contractor registration.

Contractors are not required to be registered in the Central Contractor Registration (CCR) for contracts awarded to support unusual and compelling needs or emergency acquisitions. (See 4.1102). However, contractors are required to register with CCR in order to gain access to the Disaster Response Registry. Contracting officers shall consult the Disaster Response Registry at [www.ccr.gov](http://www.ccr.gov) to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

#### PART 26—OTHER SOCIOECONOMIC PROGRAMS

##### 26.205 [Redesignated as 26.206]

■ 9. Redesignate section “26.205” as section “26.206” and add a new section “26.205” to read as follows:

##### 26.205 Disaster Response Registry.

(a) Contracting officers shall consult the Disaster Response Registry at [www.ccr.gov](http://www.ccr.gov) to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas.

(b) A list of prospective vendors voluntarily participating in the Disaster Response Registry can be retrieved using the CCR Search tool on the CCR webpage. These vendors may be identified by selecting the criteria for “Disaster Response Contractors”. Contractors are required to register with

CCR in order to gain access to the Disaster Response Registry.

\* \* \* \* \*

#### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 52.204–7 [Amended]

■ 10. Amend section 52.204–7 by removing from the introductory paragraph “4.1104” and adding “4.1105” in its place.

##### 52.226–3 [Amended]

■ 11. Amend section 52.226–3 by removing from the introductory paragraph “26.205(a)” and adding “26.206(a)” in its place.

##### 52.226–4 [Amended]

■ 12. Amend section 52.226–4 by removing from the introductory paragraph “26.205(b)” and adding “26.206(b)” in its place.

##### 52.226–5 [Amended]

■ 13. Amend section 52.226–5 by removing from the introductory paragraph “26.205(c)” and adding “26.206(c)” in its place.

[FR Doc. E9–24554 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–S

#### DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 6

[FAC 2005–37; FAR Case 2007–008; Item II; Docket 2007–0001, Sequence 14]

RIN 9000–AK90

#### Federal Acquisition Regulation; FAR Case 2007–008, Limiting Length of Noncompetitive Contracts in “Unusual and Compelling Urgency” Circumstances

**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) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 862 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and Office of Federal Procurement Policy (OFPP)

Administrator's memorandum of May 31, 2007. The rule limits the length of contracts awarded noncompetitively under unusual and compelling urgency circumstances to the minimum contract period necessary to meet the requirements, and no longer than one year, unless the head of the agency determines that exceptional circumstances apply.

**DATES:** *Effective Date:* October 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-37, FAR case 2007-008.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Office of Federal Procurement Policy (OFPP) Administrator's memorandum of May 31, 2007, issued to Chief Acquisition Officers and Senior Procurement Executives, proposed several initiatives, including promoting competition in Federal acquisition, challenging any barriers to such competition, and reinvigorating the role of the competition advocate. Subsequent to issuance of the memorandum, OFPP submitted multiple business cases proposing FAR changes to strengthen Federal acquisition competition policies. These were established as individual FAR cases. This FAR case specifically addresses the OFPP initiative to limit the length of contracts awarded noncompetitively under the authorities for unusual and compelling urgency. DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 73 FR 5784, January 31, 2008. The 60-day comment period for the proposed rule ended March 31, 2008. Two respondents provided comments for a total of eight comments.

In October 2008 the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110-417, was enacted. Section 862 of this Act amended section 303(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(d) and 10 U.S.C 2304(d)) to require that contracts awarded under the authority of 41 U.S.C 252(c)(2) and 10 U.S.C. 2304(c) (FAR 6.302-2, Unusual and compelling urgency), (1) may not exceed the time necessary to meet the unusual and compelling requirements, may not exceed the time for the agency to enter into another contract for the required goods and services through the use of competitive procedures, and may not exceed one year unless the head of the

agency entering into the contract determines that exceptional circumstances apply; and (2) that the requirements in (1) of this paragraph apply to any contract in amount greater than the simplified acquisition threshold.

The public comments and requirements of the Act were considered by the Councils in the formation of this final rule.

*Comment 1:* One respondent recommended that the Councils should shorten the contract term to not exceed six months in lieu of the stated "no longer than one year."

*Response:* Non-concur. The time period is required by statute.

*Comment 2 and 3:* One respondent stated that the term "head of the contracting activity" requires clarification. The respondent urges the rule refer to the definition for the "head of the contracting activity" by including FAR subpart 2.101 in FAR 6.302-2(d). Another respondent suggested that the rule specifically state whether or not the head of the contracting activity's authority to approve a period of performance longer than one year is delegable.

*Response:* Non-concur. The National Defense Authorization Act requires that the head of the agency make the determination required by FAR 6.302-2(d). "Head of the agency" is defined in FAR subpart 2.101 and does not require defining in FAR 6.302-2(d).

The rule is silent on whether the authority may be delegated. However, FAR 1.108(b) provides that each authority is delegable unless specifically stated otherwise.

*Comment 4:* Both respondents asked whether the approval process will be governed by FAR 6.304, which requires approval by other government officials depending on the monetary value of the proposed contract? The respondents urged that the process be simplified and duplication of paperwork reduced to prevent the filing of multiple justifications and approvals.

*Response:* The approval process in 6.302-2(d)(2) for the exceptional circumstances determination is not governed by FAR 6.304. The approval levels are different. The requirement for determining exceptional circumstances apply is separate from the approval process at FAR 6.304. The rule requires the determination be obtained prior to the award of the contract; or may be obtained after award when making the determination prior to award would unnecessarily delay the acquisition.

*Comment 5:* The authority of FAR 6.302-2(c)(1) currently allows urgent and compelling justifications to be

"made and approved" after contract award. A respondent suggested that the new FAR citation 6.302-2(d) be added to the 6.303 and 6.304 currently referenced in FAR 6.302-2(c)(1) to make it clear that this can still be done.

*Response:* Non-Concur. As stated in the prior response, the approval process is not governed by FAR 6.303 or FAR 6.304. The requirement for making the determination for a performance period greater than one year, by the head of the agency, for noncompetitive contracts in unusual urgency and compelling circumstances, is separate from the approval process at FAR 6.304. The rule provides for the determination for a performance period greater than one year to be obtained after contract award when making the determination prior to award would unreasonably delay the acquisition.

*Comment 6:* One respondent urged that there be discussion added on the public availability of approval records filed by the head of the contracting activity.

*Response:* Non-concur. FAR Case 2008-003, Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts-Section 844 of the National Defense Authorization Act for Fiscal Year 2008 (74 CFR 2731, January 15, 2009), requires the public disclosure of justification and approval documents for noncompetitive contracts which is a statutory requirement by 10 U.S.C. 2304 and 41 U.S.C. 253.

*Comment 7:* One respondent requested consideration of the impacts of subsequent changes to the contract awarded under the new rule (e.g., an amendment, a modification, or a follow-on contract) to the one-year contract award restriction.

*Response:* Non-concur. This rule does not make changes to the existing regulations regarding use of non-competitive awards. The contracting activity must still comply with the justification requirements at FAR subpart 6.3 when awarding an out-of-scope modification to a contract, or a follow-on contract.

*Comment 8:* Consider a standing exception for certain multiple year non-severable services (e.g., a major acquisition that requires a period of performance greater than one year in order to develop or manufacture an end product).

*Response:* Non-concur. The rule provides for any exception to the one-year limit by having the head of the agency make the determination for the longer performance contract period.

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 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 rule addresses internal agency procedures and will benefit small entities by encouraging competition after a one year performance period, except when a longer performance period is properly approved. Therefore, a Final Regulatory Flexibility Analysis has not been performed.

### 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. Chapter 35, *et seq.*

### List of Subjects in 48 CFR Part 6

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 6 as set forth below:

### PART 6—COMPETITION REQUIREMENTS

■ 1. The authority citation for 48 CFR part 6 continues to read as follows:

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

■ 2. Amend section 6.302–2 by adding paragraph (d) to read as follows:

#### 6.302–2 Unusual and compelling urgency.

\* \* \* \* \*

(d) *Period of Performance.* The total period of performance of a contract awarded using this authority—

(1) May not exceed the time necessary:

(i) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(ii) For the agency to enter into another contract for the required goods and services through the use of competitive procedures.

(2) May not exceed one year unless the head of the agency entering into the

contract determines that exceptional circumstances apply.

(3) The requirements in paragraphs (1) and (2) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

(4) The determination of exceptional circumstances is in addition to the approval of the justification in 6.304.

(5) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 12 and 52

[FAC 2005–37; FAR Case 2008–026; Item III; Docket 2009–0013, Sequence 1]

RIN 9000–AL25

#### Federal Acquisition Regulation; FAR Case 2008–026, GAO Access to Contractor Employees

**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 adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) which allows the Government Accountability Office to interview current contractor employees during the audit of the contractor's records.

**DATES:** *Effective Date:* October 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward Loeb, Director, Contract Policy Division at (202) 501–0650. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–37, FAR case 2008–026.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110–417) added language allowing the Comptroller General to interview current employees regarding transactions being examined during an audit of contracting records. The Act revises 41 U.S.C. 254d(c)(1) and 10 U.S.C. 2313(c)(1) by inserting before the period: “and to interview any current employee regarding such transactions”. To implement the Act, FAR clauses 52.215–2, Audit and Records—Negotiation, and 52.214–26, Audit and Records—Sealed Bidding, were amended to add the required statutory language. The statute did not specify that section 871 apply to commercial item contracts and therefore was not applied to FAR clause 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Order—Commercial Items. Section 34 of the Office of Federal Procurement Policy Act (OFPP), 41 U.S.C. 430, exempts commercial item acquisitions from new provisions of law, such as section 871, unless (1) the law provides criminal or civilian penalties, (2) the law expressly refers to 41 U.S.C. 430 and states that it applies to commercial item contracts, or (3) the FAR Council makes a written determination that it would not be in the best interest of the Federal Government to exempt commercial item contracts. Thus, this new provision was added to the list of inapplicable laws at FAR 12.503(a).

DoD, GSA, and NASA published an interim rule with a request for comments in the **Federal Register** at 74 FR 14649 on March 31, 2009. No comments were received. The interim rule is converted to a final rule without change.

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12886, 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 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 only a small number of small businesses are audited by the Government Accountability Office (GAO). Currently