

therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission has estimated the number of licensed NCE television stations to be 380. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

60. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

#### Description of Proposed Reporting, Recordkeeping and Other Compliance Requirements

61. The rules ultimately adopted as a result of this *NPRM* may contain new or modified information collections. We anticipate that none of the changes would result in an increase to the reporting and recordkeeping requirements of small entities. We invite small entities to comment in response to the *NPRM*.

#### Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered

62. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof,

for small entities. First, regarding the establishment of a procedure that would shorten the five-year term of the extension of the exclusive contract prohibition, the Commission may choose to establish such a procedure or, in the alternative, it may not choose to do so. Second, regarding the extension of the program access rules to terrestrially delivered cable-affiliated programmers, the Commission may choose to extend these rules to terrestrially delivered cable-affiliated programmers or, in the alternative, it may choose not to extend these rules to such programmers. Third, regarding expansion of the exclusive contract prohibition to apply to non-cable-affiliated programming that is affiliated with a different MVPD, principally a DBS provider, the Commission may choose to extend the exclusive contract prohibition to apply to such non-cable-affiliated programming or, in the alternative, it may choose not to extend the exclusive contract prohibition to such programming. Fourth, regarding the practice of programmers to engage in tying of desired with undesired programming, the Commission may choose to preclude all such tying arrangements or, in the alternative, it may choose not to preclude any such arrangements or, in the alternative, it may choose to preclude only certain tying arrangements. Fifth, with respect to concerns raised by small and rural MVPDs regarding conditions imposed by programmers for access to content, the Commission may choose to take action to address some or all of these concerns or, in the alternative, it may choose not to take action to address these concerns. Sixth, regarding the establishment of a process whereby a program access complainant may seek a temporary stay of any proposed changes to its existing programming contract pending resolution of the complaint, the Commission may establish such a process or, in the alternative, it may choose not to establish such a process. Seventh, regarding the requirement that parties submit to the Commission, when requested, "final offer" proposals as part of the remedy phase of the complaint process, the Commission may adopt such a requirement or, in the alternative, it may choose not to adopt such a requirement. We invite comment on the options the Commission is considering, or alternatives thereto as referenced above, and on any other alternatives commenters may wish to propose for the purpose of minimizing significant economic impact on smaller entities.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

63. None.

#### F. Additional Information

64. For additional information on this proceeding, contact Steven Broecker, [Steven.Broeckaert@fcc.gov](mailto:Steven.Broeckaert@fcc.gov); David Konczal, [David.Konczal@fcc.gov](mailto:David.Konczal@fcc.gov); or Katie Costello, [Katie.Costello@fcc.gov](mailto:Katie.Costello@fcc.gov); of the Media Bureau, Policy Division, (202) 418-2120.

#### VIII. Ordering Clauses

65. Accordingly, *it is ordered*, pursuant to the authority found in sections 4(i), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 548, this *Notice of Proposed Rulemaking Is Adopted*.

66. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 07-5388 Filed 10-30-07; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 7, 8, 12, and 39

[FAR Case 2005-014; Docket 2007-0001; Sequence 9]

RIN 9000-AK83

#### Federal Acquisition Regulation; FAR Case 2005-014, SmartBUY

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

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the Governmentwide Enterprise Software Licensing Program,

also known as SmartBUY. This action is necessary to comply with Office of Management and Budget Memorandum M-04-08, Maximizing Use of SmartBuy and Avoiding Duplication of Agency Activities with the President's 24 E-Gov Initiatives, dated February 25, 2004. By leveraging the Federal Government Enterprise Software Licensing Program, the Government will achieve the maximum cost savings and favorable terms and conditions for acquiring software and software maintenance. This rule impacts contracting officers and other acquisition officials responsible for reviewing the terms, conditions, and prices for the acquisition of commercial software and software maintenance.

**DATES:** Interested parties should submit written comments to the FAR Secretariat on or before December 31, 2007 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2005-014, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

- To search for any document, first select under "Step 1," "Documents with an Open Comment Period" and select under "Optional Step 2," "Federal Acquisition Regulation" as the agency of choice. Under "Optional Step 3," select "Proposed Rules". Under "Optional Step 4," from the drop down list, select "Document Title" and type the FAR case number "2005-014". Click the "Submit" button. Please include your name and company name (if any) inside the document. You may also search for any document by clicking on the "Search for Documents" tab at the top of the screen. Select from the agency field "Federal Acquisition Regulation", and type "2005-014" in the "Document Title" field. Select the "Submit" button.

- 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 FAR case 2005-014, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT** Ms. Jeritta Parnell, Procurement Analyst, at (202) 501-4082 for clarification of content. For information pertaining to status or publication schedules, contact

the FAR Secretariat at (202) 501-4755. Please cite FAR case 2005-014.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

Pursuant to Section 5112 of the Clinger-Cohen Act of 1996 (40 U.S.C. 11302), the Office of Management and Budget (OMB) is responsible for improving the acquisition and use of information technology (IT) by the Federal Government and designating Executive Agents for Governmentwide acquisitions of IT. To ensure that the Federal Government is maximizing its buying power to achieve the cost savings and favorable terms and conditions for commercial software, OMB created the SmartBUY initiative. GSA is designated as the Executive Agent for the SmartBUY initiative.

This rule proposes to amend the FAR to ensure SmartBUY is considered during acquisition planning, and prescribes the policies and procedures for using SmartBUY enterprise agreements.

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 Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies to commercial agreements under the SmartBUY Program that are based on existing negotiated contracts. These agreements direct contracting officers to consider established contracting vehicles. Small businesses have participated in the SmartBuy Program to date. In fact, three of the six existing agreements are with small businesses.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 7, 8, 12, and 39 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.* (FAR case 2005-014), in correspondence.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information

collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### **List of Subjects in 48 CFR Parts 7, 8, 12, and 39**

Government procurement.

Dated: October 22, 2007.

**Al Matera,**

*Director, Office of Acquisition Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 7, 8, 12, and 39 as set forth below:

1. The authority citation for 48 CFR parts 7, 8, 12, and 39 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 7—ACQUISITION PLANNING**

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

##### **7.103 Agency-head responsibilities.**

\* \* \* \* \*

(v) Ensuring that agency planners fulfill requirements for commercial software or related services, such as software maintenance, in accordance with the SmartBUY program (see FAR Subpart 8.9).

3. Amend section 7.105 by adding paragraph (b)(4)(ii)(B)(3) to read as follows:

##### **7.105 Contents of written acquisition plans.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(3) Ordering through a SmartBUY agreement leverages Government user volume and achieves a substantial price discount.

\* \* \* \* \*

#### **PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

4. Add subpart 8.9 to read as follows:

##### **Subpart 8.9—Acquisition of Commercial Software**

*Sec.*

8.900 Scope of subpart.

8.901 Definitions.

8.902 General.

8.903 Policy.

8.904 Acquisition procedures.

8.905 Approval and Notification.

##### **8.900 Scope of subpart.**

This subpart prescribes the policies and procedures for acquisition of commercial software or related services, such as software maintenance, through

the Governmentwide Enterprise Software Program, also known as SmartBUY.

#### 8.901 Definitions.

As used in this subpart—

*Enterprise software agreement (ESA)* means an agreement established for agencies to use to acquire designated commercial software or related services, such as software maintenance.

*Software maintenance* means activities performed and/or services provided by the original equipment manufacturer (OEM) as standard services to keep software functioning to the commercial specification, at established catalog or market prices, e.g., the right to receive and use upgraded versions of software, updates, and revisions.

*Software product manager* means the Government official who manages an enterprise software agreement.

#### 8.902 General.

SmartBUY is a consolidated purchasing program for the acquisition of commercial software or related services, such as software maintenance. SmartBUY is designed to provide all agencies, regardless of their size, the greatest price discounts available to the Federal Government. The SmartBUY Software Program (see website at <http://www.gsa.gov/smartbuy>) promotes the use of Enterprise Software Agreements (ESAs) with contractors, called SmartBUY agreements, that allow the Government to obtain favorable terms and pricing for commercial software or related services, such as software maintenance.

#### 8.903 Policy.

Prior to issuing contracts for commercial software or related services, such as software maintenance, agencies shall review the SmartBUY agreements at <http://www.gsa.gov/smartbuy> or <http://www.esi.mil>. Federal agencies shall place an order to fulfill requirements for commercial software or related services, such as software maintenance, when a SmartBUY agreement is available and is applicable to the agency's requirement and volume.

#### 8.904 Acquisition procedures.

(a) The contracting officer or other ordering official must review the terms,

conditions, and prices using market research or other procurement practices to determine if commercial software or related services, such as software maintenance, is available through a SmartBUY agreement.

(b) When the terms, conditions, and prices represent a best value to the Government, the contracting officer or other ordering official shall place an order to fulfill the requirement for commercial software or related services, such as software maintenance, through a SmartBUY agreement.

(c) When an existing SmartBUY agreement does not represent the best value to the Government, the contracting officer or other ordering official should allow the contractor an opportunity to provide the same or a better value under the SmartBUY agreement before using alternate procurement methods. In such cases, the contracting officer or other ordering official should notify the SmartBUY program office Software Product Manager of specific concerns, so that the SPM can take action to potentially improve an existing SmartBUY agreement's terms, conditions or prices through the SmartBUY website.

(d) When an available SmartBUY agreement will not be used, the contracting officer or other ordering official must comply with the approval and notification procedures in 8.905.

(e) When the required commercial software or related services, such as software maintenance, is not covered by a SmartBUY agreement, the contracting officer may fulfill a requirement using other procurement methods.

#### 8.905 Approval and Notification.

(a) The contracting officer or ordering official must get approval from the agency Senior Procurement Executive and the agency Chief Information Officer, or as provided by agency procedures, when not using an available SmartBUY agreement. The approval shall—

- (1) Describe the agency's requirement;
- (2) Explain the reason for not using an existing SmartBUY agreement; and
- (3) Describe how the agency will satisfy its needs for commercial software and negotiate a fair and reasonable price.

(b) The contracting officer or ordering official must notify GSA when an available SmartBUY agreement is not used to acquire commercial software or related services, such as software maintenance, by sending a copy of the approval to GSA at— General Services Administration, Deputy Associate Administrator, Office of Technology Strategy (ME), 1800 F Street, NW, Washington, DC 20406; or send via e-mail to [SmartBUYwaiver@gsa.gov](mailto:SmartBUYwaiver@gsa.gov).

### PART 12—ACQUISITION OF COMMERCIAL ITEMS

5. Amend section 12.212 by adding paragraph (c) to read as follows:

#### 12.212 Computer software.

\* \* \* \* \*

(c) Acquisition officials shall consider using SmartBUY Enterprise Software Agreements when acquiring commercial software or related services, such as software maintenance (see FAR Subpart 8.9).

### PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

6. Amend section 39.101 by revising paragraph (b) to read as follows:

#### 39.101 Policy.

\* \* \* \* \*

(b)(1) In acquiring information technology, agencies shall identify their requirements pursuant to—

(i) OMB Circular A-130, including consideration of security of resources, protection of privacy, national security and emergency preparedness, accommodations for individual with disabilities, and energy efficiency; and

(ii) FAR 8.903 and the availability of a SmartBUY Agreement.

(2) When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of information technology through market research (see Part 10) and the application of technology refreshment techniques.

\* \* \* \* \*

[FR Doc. 07-5405 Filed 10-30-07; 8:45 am]

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