

the other, the interim rule would render moot any planning-stage decision the contracting officer would make if the award were over \$100 million.

**Response:** The acquisition planning team (e.g., contracting officer, program office, customers) is tasked to define the exact strategy to support the acquisition requirement. The rule does not render moot the contracting officer's decision in the acquisition-planning process. The contracting officer is still required by FAR 16.504 to determine the feasibility of establishing single- or multiple-award contracts.

**Comment 29. "Head of Agency Override of Contracting Officer Determination."** According to one commenter, although the interim rule may be designed to facilitate a proper level of quality assurance over certain Government actions designed to increase competition for task orders, and is not reflective of any failure by the private sector in its transactional conduct, it is wholly possible and very likely that an agency head could veto a single IDIQ award at time of award, presumably long after a contracting officer may have determined that multiple awards are not in the Government's best interest and for reasons that the head of the agency may not be held accountable to explain. The commenter suggests that one way to deal with that lack of transparency would be to allow any contracting officer's written determination that a multiple-award contract is not appropriate made at the acquisition planning stages to have great presumptive weight in any internal agency deliberations for the agency-head exception process or require that the agency-head determination be published if contrary to the contracting officer's initial determination.

**Response:** The Councils do not agree that the written determination by the head of the agency should be published when it differs from the contracting officer's initial determination to award a single IDIQ contract. This is not required by section 843. Further, the purpose of the rule is to encourage competition and to make the highest levels of the agency aware of the use of a single-award task- or delivery-order contract greater than \$100 million. If a contracting officer's initial determination to award a single IDIQ contract is later overturned, this decision would need to be substantiated and justified and would be completely in line with the rule's goal of encouraging competition and the use of multiple awards under IDIQ contracts valued over \$100 million. Whether these determinations are releasable to

the public/private sector is determined by the Freedom of Information Act. Lastly, the approval authority to award a single-award task- or delivery-order contract greater than \$100 million rests with the head of the agency per FAR 16.504(c)(1)(ii)(D) and, to the extent the head of the agency considers the acquisition-planning determination on whether multiple awards are appropriate by the contracting officer is within his or her discretion; however, the law does not require such consideration. Contracting officers should be fully engaged or involved in the decision-making process.

This 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.

## 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 enhances competition for small and large business, and the information that will be provided in debriefings on procurements over \$5 million will benefit firms by enabling them to improve future offers. In addition, the Councils sought comments from small businesses on the affected FAR part 16 at the publication of the interim rule in the **Federal Register** at 73 FR 54008 on September 17, 2008. One comment was received and is discussed at Comment 22.

## 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 16

Government procurement.

Dated: March 15, 2010.

Al Matera,

Director, Acquisition Policy Division.

■ Accordingly, the interim rule published in the **Federal Register** at 73 FR 54008 on September 17, 2008, is adopted as a final rule with the following changes:

## PART 16—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 16 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).

### 16.501–1 [Amended]

■ 2. Amend section 16.501–1 by adding “-” between the words “Delivery” and “order” in the definition of “Delivery order contract” and between the words “Task” and “order” in the definition of “Task order contract”.

### 16.501–2 [Amended]

■ 3. Amend section 16.501–2 in the last sentence of paragraph (a) by adding “-” between the words “delivery” and “order” and between the words “task” and “order”.

### 16.503 [Amended]

■ 4. Amend section 16.503 by removing from paragraph (a) introductory text “period” and adding “period (from one contractor)” in its place.

■ 5. Amend section 16.504 by revising paragraph (c)(1)(ii)(D)(3) to read as follows:

### 16.504 Indefinite-quantity contracts.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(D) \* \* \*

(3) The requirement for a determination for a single-award contract greater than \$100 million:

(i) Is in addition to any applicable requirements of Subpart 6.3.

(ii) Is not applicable for architect-engineer services awarded pursuant to Subpart 36.6.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 25 and 52

[FAC 2005–39; FAR Case 2008–036; Item V; Docket 2009–019, Sequence 1]

RIN 9000–AL23

**Federal Acquisition Regulation; FAR Case 2008–036, Trade Agreements—Costa Rica, Oman, and Peru**

**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 (the Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Dominican Republic—Central America—United States Free Trade Agreement with respect to Costa Rica, the United States-Oman Free Trade Agreement, and the United States-Peru Trade Promotion Agreement.

**DATES:** *Effective Date:* March 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Lori Sakalos, Procurement Analyst, at (202) 208-0498. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-39, FAR case 2008-036.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Councils published an interim rule in the **Federal Register** at 74 FR 28426 on June 15, 2009. No public comments were received in response to the interim rule.

The interim rule added Costa Rica, Oman, and Peru to the definition of “Free Trade Agreement country”. The rule also deleted Costa Rica from the definition of “Caribbean Basin country” because, in accordance with section 201(a)(3) of Pub. L. 109-53, when the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA—DR) agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act.

The excluded services for the Oman and Peru Free Trade Agreements (FTAs) are the same as for the Bahrain FTA, CAFTA-DR, Chile FTA, and North American Free Trade Agreement. Costa Rica has the same thresholds as the other CAFTA-DR countries.

This 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.

**B. Regulatory Flexibility Act**

The Department of Defense, General Services Administration, and 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 acquisitions that are set aside for small businesses are exempt from trade agreements. In addition, the Department of Defense only applies the trade agreements to the non-defense items listed at the Defense Federal Acquisition Regulation Supplement 225.401-70. No comments were received relating to impact on small business concerns.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does apply, and this rule is added to the certification and information collection requirements in the provisions at FAR 52.212-3, 52.225-4, 52.225-6, and 52.225-11 currently approved under Office of Management and Budget clearance 9000-0136 (Commercial Item Acquisition; FAR sections affected are part 12 and provisions 52.212-1 and 52.212-3), 9000-0130 (Buy America Act, Trade Agreements Act Certificate; FAR section affected is provision 52.225-4), 9000-0025 (Buy American Act, Trade Agreements Act Certificate; FAR section affected is provision 52.225-6), and 9000-0141 (Buy America Act—Construction; FAR sections affected are subpart 25.2 and provisions 52.225-9 and 52.225-11) respectively. The impacts of this change on information collection requirements are negligible. No comments were received on the burden or number of entities affected by this rulemaking.

**List of Subjects in 48 CFR Parts 25 and 52**

Government procurement.

Dated: March 15, 2010.

**Al Matera,**

*Director, Acquisition Policy Division.*

■ Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published in the **Federal Register** at 74 FR 28426 on June 15, 2009, is adopted as a final rule without change.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 52**

[FAC 2005-39; FAR Case 2008-015; Item VI; Docket 2009-0015, Sequence 1]

**RIN 9000-AL26**

**Federal Acquisition Regulation; FAR  
Case 2008-015, Payments Under  
Fixed-Price Architect-Engineer  
Contracts**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the withholding of payment requirements under FAR 52.232-10. This FAR change was initiated by the Small Business Administration (SBA) Advocacy Office and is a part of the SBA, Office of Advocacy’s Regulatory Review and Reform Initiative, or r3 initiative. The r3 program was established to help small businesses address the cumulative Federal regulatory burden.

**DATES:** *Effective Date:* April 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Suzanne Neurauter, Procurement Analyst, at 202-219-0310. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-39, FAR case 2008-015.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The FAR at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, currently requires contracting officers to withhold 10 percent of the amounts due on each voucher; however, payment can be made in full during any month in which the contracting officer determines the performance to be satisfactory. The Government retains the withheld amount until the contracting officer determines that the work has been satisfactorily completed. The contracting officer may release excess withheld amounts to the contractor when the contracting officer determines