

received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt; or

(iii) It is the only proposal received and it is negotiated under part 15 of the Federal Acquisition Regulation.

(2) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the technical proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the Government office designated for receipt of technical proposals by the exact time specified in the request for technical proposals, and urgent Government requirements preclude amendment of the request for technical proposals, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the request for technical proposals on the first work day on which normal Government processes resume.

(e) Technical proposals may be withdrawn by written notice received at any time before the exact time set for receipt of technical proposals. If the request for technical proposals authorizes facsimile technical proposals, they may be withdrawn via facsimile received at any time before the exact time set for receipt of proposals, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A technical proposal may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of technical proposals, the identity of the person requesting withdrawal is established and the person signs a receipt for the technical proposal.

(End of provision)

#### 52.214-31 [Amended]

12. Amend section 52.214-31 in the introductory text of the provision by removing "14.201-6(w)" and adding "14.201-6(v)" in its place.

#### 52.214-32 and 52.214-33 [Removed and Reserved]

13. Remove and reserve sections 52.214-32 and 52.214-33.

#### 52.214-34 [Amended]

14. Amend section 52.214-34 in the introductory paragraph of the provision by removing "14.201-6(x)" and adding "14.201-6(w)" in its place.

#### 52.214-35 [Amended]

15. Amend section 52.214-35 in the introductory paragraph of the provision by removing "14.201-6(y)" and adding "14.201-6(x)" in its place.

16. Amend section 52.215-1 to revise the date of the provision and paragraph (c)(3) to read as follows:

#### 52.215-1 Instructions to Offerors—Competitive Acquisition.

\* \* \* \* \*

#### Instructions to Offerors—Competitive Acquisition (Nov 1999)

\* \* \* \* \*

(c) \* \* \*

(3) *Submission, modification, revision, and withdrawal of proposals.* (i) Offerors are responsible for submitting proposals, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, revision, or withdrawal received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award.

Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 15 and 37

[FAC 97-14; FAR Case 97-038; Item VIII]

RIN 9000-AI07

#### Federal Acquisition Regulation; Evaluation of Proposals for Professional Services

**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 provide guidance on the evaluation of proposals that include uncompensated overtime hours.

**EFFECTIVE DATE:** November 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson, Procurement Analyst, at (202) 501-3221. Please cite FAC 97-14, FAR case 97-038.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

A final rule published as Item VII of Federal Acquisition Circular (FAC) 97-01 in the **Federal Register** on August 22, 1997 (62 FR 44813) elevated guidance regarding uncompensated overtime from the Defense Federal Acquisition Regulation Supplement (DFARS) Part

237 to FAR Part 37, and elevated a DFARS solicitation provision to FAR 52.237-10, Identification of Uncompensated Overtime. However, the FAR rule in FAC 97-01 did not address the evaluation of proposals that include uncompensated overtime.

Therefore, a proposed FAR rule was published in the **Federal Register** on August 24, 1998 (63 FR 45112), to add guidance at FAR 15.305(a)(1) and FAR 37.115-2(c) on the evaluation of proposed uncompensated overtime hours. One respondent submitted comments in response to the proposed rule. The Councils considered the respondent's comments in the development of the final rule and converted the proposed rule to a final rule without change.

This rule was not subject to Office of Management and Budget 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 guidance added to FAR Parts 15 and 37 is consistent with the existing policy pertaining to uncompensated overtime at FAR 37.115 and 52.237-10.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 15 and 37**

Government procurement.  
Dated: September 14, 1999.

**Edward C. Loeb,**  
*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 15 and 37 as set forth below:

1. The authority citation for 48 CFR Parts 15 and 37 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 15—CONTRACTING BY NEGOTIATION**

2. In section 15.305, amend paragraph (a)(1) by adding a parenthetical as the penultimate sentence to read as follows:

**15.305 Proposal evaluation.**

(a) \* \* \*  
(1) \* \* \* (See 37.115 for uncompensated overtime evaluation.)

\* \* \* \* \*

**PART 37—SERVICE CONTRACTING**

3. In section 37.115-2, add paragraph (c) to read as follows:

**37.115-2 General policy.**

\* \* \* \* \*

(c) Contracting officers must ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the Government's requirements (see 15.305 for competitive negotiations and 15.404-1(d) for cost realism analysis). When acquiring these services, contracting officers must conduct a risk assessment and evaluate, for award on that basis, any proposals received that reflect factors such as:

- (1) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and
- (2) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 17 and 52**

[FAC 97-14; FAR Case 98-606; Item IX]  
RIN 9000-AI26

**Federal Acquisition Regulation; Option Clause Consistency**

**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 to adopt the amendments of the proposed rule without change into the CFR. The rule amends the Federal Acquisition Regulation (FAR) to make the format of all option clauses consistent and to clarify that contracting officers may tailor the time period for providing a preliminary notice of the Government's intent to exercise an option.

**EFFECTIVE DATE:** November 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-14, FAR case 98-606.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Councils published a proposed rule in the **Federal Register** at 64 FR 3618, January 22, 1999, to amend FAR 17.208(g) to clarify that the time period for providing a preliminary notice of the Government's intent to exercise a contract option in the clause at FAR 52.217-9, Option to Extend the Term of the Contract, may be tailored, and amend the clause at FAR 52.217-8 to make the format of the Option to Extend Services clause consistent with the format of other option clauses in the FAR.

Two respondents submitted public comments. The Councils considered the comments in finalizing the rule.

This rule was not subject to Office of Management and Budget 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 merely clarifies an existing practice.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*