

Federal Acquisition Circular 2005-39

Item I--Extend Use of Simplified Acquisition Procedures for Certain Commercial Items (FAR Case 2009-035)

This final rule amends the FAR to implement section 816 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010. The rule extends for two more years the commercial items test program in FAR subpart 13.5. The program was to expire January 1, 2010.

Item II--Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items (FAR Case 2008-012)

This final rule adopts, with minor changes, the interim rule published in the Federal Register at 74 FR 11826 on March 19, 2009. The interim rule amended the FAR to implement section 814 of the NDAA for FY 2008. Section 814 requires the harmonization of the threshold for cost or pricing data on non-commercial modifications of commercial items with the Truth in Negotiations Act (TINA) threshold for cost or pricing data. By linking the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold at FAR 15.403-4, whenever the TINA threshold is adjusted the threshold for cost or pricing data on non-commercial modifications of commercial items will be automatically adjusted as well.

Item III--Use of Standard Form 26 - Award/Contract (FAR Case 2008-040)

This final rule modifies the instructions for use of the Standard Form 26, Award/Contract, at FAR subparts 15.5 and 53.2 to clarify that block 18 of the form should not be used to award a negotiated procurement. No change is made to existing policy or procedures.

Item IV--Enhanced Competition for Task- and Delivery-Order Contracts--Section 843 of the Fiscal Year 2008 National Defense Authorization Act (FAR Case 2008-006)

This final rule adopts, with changes, the interim rule published in the Federal Register at 73 FR 54008 on September 17, 2008. The interim rule amended FAR subpart 16.5 to implement section 843 of the NDAA for FY 2008. The provisions of section 843 include (1) Limitation on single award task- or delivery-order contracts greater than \$100 million; (2) Enhanced competition for task and delivery orders in excess of \$5 million; and (3) Restriction on protests in connection with issuance or proposed issuance of a task or delivery order except for a protest on orders on the grounds that the order increases the scope, period, or maximum value of the contract under which the order is issued, or a protest of an order valued in excess of \$10 million. Several changes are made to the FAR as result of public comments on the interim rule. FAR 16.503 is amended to clarify that a requirements contract is awarded to one contractor. FAR 16.504(c)(1)(ii)(D)(3) is amended to clarify that the agency-head determination to award a single-award task- or delivery-order contract over \$100 million does not apply to an

architect-engineer task- or delivery-order contract awarded pursuant to FAR subpart 36.6. The Councils also revised FAR 16.504(c)(1)(ii)(D)(3) to state that the requirement for a determination for a single-award contract greater than \$100 million is in addition to any applicable requirements of FAR subpart 6.3. This change is made to clarify that the determination for a single award task- or delivery-order contract greater than \$100 million is required in addition to the Justification and Approval (J&A) required by FAR subpart 6.3 when a procurement will be conducted as other than full and open competition.

Item V--Trade Agreements--Costa Rica, Oman, and Peru (FAR Case 2008-036)

The Councils have adopted as final, without change, an interim rule published in the Federal Register at 74 FR 28426 on June 15, 2009, amending the 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. This final rule allows contracting officers to purchase the goods and services of Costa Rica, Oman, and Peru without application of the Buy American Act if the acquisition is subject to the applicable trade agreements.

Item VI--Payments Under Fixed-Price Architect-Engineer Contracts (FAR Case 2008-015)

This rule amends FAR 52.232-10, Payments under Fixed-Price Architect-Engineer Contracts, to revise and clarify the retainage requirements. The contracting officer can withhold up to 10 percent of the payment due in any billing period when the contracting officer determines that such a withholding is necessary to protect the Government's interest and ensure satisfactory completion of the contract. However, withholding the entire 10 percent is not required, and no withholding is required if the contractor's performance has been satisfactory. The changes clarify that retainage is optional and any amounts retained should not be held over beyond the satisfactory completion of the instant contract.

Item VII--Technical Amendment

An editorial change has been made at FAR 14.202-4(a)(3).