

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).

Dated: March 15, 2010.

**Al Matera,**

*Director, Acquisition Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2005–39 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–39 is effective March 19, 2010, except for Items III, IV, and VI, which are effective April 19, 2010.

Dated: March 12, 2010.

**Linda W. Neilson,**

*Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).*

Dated: March 11, 2010.

**Rodney P. Lantier,**

*Acting Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: March 8, 2010.

**William P. McNally,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 2010–5984 Filed 3–18–10; 8:45 am]

**BILLING CODE 6820–EP–S**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 13**

**[FAC 2005–39; FAR Case 2009–035; Item I; Docket 2010–0080, Sequence 1]**

**RIN 9000–AL52**

**Federal Acquisition Regulation; FAR Case 2009–035, Extend Use of Simplified Acquisition Procedures for Certain Commercial Items**

**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 subpart 13.5, “Test Program for Certain Commercial Items,” to implement section 816 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub. L. 111–84). The rule extends the program for two more years. The program was to expire January 1, 2010.

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

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–39, FAR case 2009–035.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends the FAR to revise section 13.500(d) to implement section 816 of the NDAA for FY 2010. Section 816 of the NDAA for FY 2010 strikes out “2010” in subsection (e) of section 4202 of the Clinger-Cohen Act of 1996 (Division D of Pub. L. 104–106, 10 U.S.C. 2304 note) as amended by section 822 of the NDAA for FY 2008 (Pub. L. 110–181) and inserts “2012.” FAR subpart 13.5 authorizes as a test program, the use of simplified procedures for the acquisition of certain commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5.5 million, (\$11 million for acquisitions described in FAR 13.500(e)) including options, if the contracting officer can reasonably expect that offers will include commercial items. FAR subpart 13.500(d) authorizes the contracting officer to issue solicitations under this subpart until January 1, 2010. This final rule extends this authority to January 1, 2012.

**B. Decision to Issue a Final Rule**

This case implements section 816 of the NDAA for FY 2010. It merely extends the end date of the Commercial Item Test Program from January 1, 2010, to January 1, 2012. Therefore, because there is no change in policy or procedure, the Councils determined to issue a final rule without comment.

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.

**C. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required.

The Councils will consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–39, FAR Case 2009–035) in correspondence.

**D. 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 13

Government procurement.

Dated: March 15, 2010.

**Al Matera,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

#### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 13 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).

##### 13.500 [Amended]

■ 2. Amend section 13.500 by removing from paragraph (d) “January 1, 2010” and adding “January 1, 2012” in its place.

[FR Doc. 2010–5985 Filed 3–18–10; 8:45 am]

**BILLING CODE 6820–EP–S**

#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 15

[FAC 2005–39; FAR Case 2008–012; Item II; Docket 2008–0001, Sequence 23]

RIN 9000–AL12

#### Federal Acquisition Regulation; FAR Case 2008–012, Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items

**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, with minor changes, an interim rule which amended the Federal Acquisition Regulation (FAR) to implement section 814 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008. Section 814 required the harmonization of the thresholds for cost or pricing data. Specifically, section 814 required alignment of the threshold for cost or pricing data on non-commercial modifications of

commercial items with the Truth In Negotiation Act (TINA) threshold for cost or pricing data.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–39, FAR case 2008–012.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 74 FR 11826 on March 19, 2009, to implement section 814 of the NDAA for FY 2008. Section 814 implemented two areas of clarification with regards to the submission of cost or pricing data on non-commercial modifications of commercial items.

The comment period closed on May 18, 2009, with one comment received. The respondent opined that the addition of the new FAR text “at the time of contract award” was unclear. The respondent indicated that a contract’s initial price subsequently changes based upon modifications and inquired if the total price “at time of contract award” included subsequent modifications that changed the initial contract price. The respondent also highlighted the example of an indefinite delivery-indefinite quantity (IDIQ) contract where orders are issued and inquired whether “at the time of contract award” related to issuance of the IDIQ contract or individual orders placed under this IDIQ contract. The respondent also offered examples of possible revised language.

The Councils believe that, with minor changes, the language in the interim rule is appropriate. Section 814 of the NDAA for FY 2008 required the insertion of the language “at time of contract award” after the language “total price of contract”, which is already contained in FAR 15.403–1. This language is being added to clarify at what point during the life of the contract that the cost or pricing threshold should be applied under FAR 15.403–1. The Councils believe that the language “at the time of contract award” clearly indicates that subsequent modifications, other than those which meet the triggering thresholds of TINA themselves, that change a contract’s price are not factored into determining when the cost or pricing threshold should be applied under FAR 15.403–1. In the case of IDIQ contracts, it is commonly understood that it is the

estimated total value of orders for the specified period at the time of contract award, as well as the individual value of any subsequent discrete orders, to which the TINA thresholds apply. Consequently, the final rule language reflects only minor editorial changes.

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 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.*, since it is harmonizing FAR 15.403–1 with other parts of the FAR and should actually reduce the administrative burden on contractors by not requiring them to track two separate dollar thresholds for submitting cost or pricing data. It is also increasing this dollar threshold relative to the submittal of cost or pricing data in this situation and thus contractors will experience a reduced administrative burden since they no longer will be required to submit cost or pricing data on this lower threshold amount.

##### 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 15

Government procurement.

Dated: March 15, 2010.

**Al Matera,**

*Director, Acquisition Policy Division.*

■ Accordingly, the interim rule published in the **Federal Register** at 74 FR 11826 on March 19, 2009, is adopted as a final rule with the following changes:

#### PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 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 15.403–1 by revising paragraphs (c)(3)(iii)(B) and (c)(3)(iii)(C) to read as follows: