



This document is scheduled to be published in the Federal Register on 09/14/2016 and available online at <https://federalregister.gov/d/2016-22070>, and on FDsys.gov

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 49

[FAR Case 2015-039; Docket No. 2015-0039, Sequence No. 1]

RIN 9000-AN26

Federal Acquisition Regulation: Audit of Settlement Proposals

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to raise the dollar threshold requirement for the audit of prime contract settlement proposals and subcontract settlements from \$100,000 to \$750,000.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[Insert date 60 days after the date of publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2015-039 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by

searching for "FAR Case 2015-039". Select the link "Comment Now" that corresponds with "FAR Case 2015-039." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2015-039" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street, NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2015-039, 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. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Kathlyn Hopkins, Procurement Analyst, at 202-969-7226 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAR Case 2015-039.

SUPPLEMENTARY INFORMATION:

I. Background

DOD, GSA, and NASA are proposing to amend FAR 49.107 to increase the dollar threshold for the audit of prime contract settlement proposals and subcontract settlements, submitted in the event of contract termination. The threshold is increased from \$100,000 to align with the threshold in FAR 15.403-4(a)(1) for obtaining certified cost or pricing data, which is currently \$750,000. Other than the dollar amount, there will be no link between the requirements for certified cost or pricing data and the audit threshold for termination settlement proposals.

The proposed amendment will help alleviate contract close-out backlogs and enable contracting officers to more quickly deobligate excess funds from terminated contracts.

Under FAR 49.001, a "settlement proposal" is a proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by FAR part 49. Termination clauses and other contract clauses authorize contracting officers to terminate contracts for convenience or for default, and to enter into settlement agreements.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this 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 raises the threshold for audit requirements, thus reducing burdens on all types of businesses. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and it is summarized as follows:

Of all contracts awarded to small businesses in a typical year, the number terminated and subject to FAR part 49 procedures is less than one-fifth of one percent. Moreover, since the rule raises the audit threshold, even fewer small businesses will be subject to audits of their termination settlement proposals.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the proposed rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015-039), in correspondence.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 49

Government procurement.

Dated: September 9, 2016.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR part 49 as set forth below:

PART 49—TERMINATION OF CONTRACTS

1. The authority citation for 48 CFR part 49 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

2. Amend section 16.505 by revising paragraphs (a) and (b) to read as follows:

49.107 Audit of prime contract settlement proposals and subcontract settlements.

(a) The TCO shall refer each prime contractor settlement proposal valued at or above the threshold for obtaining certified cost or pricing data set forth in FAR 15.403-4(a)(1) to the appropriate audit agency for review and recommendations. The TCO may submit settlement proposals of less than the threshold for obtaining certified cost or pricing data to the audit agency. Referrals shall indicate any specific information or data that the TCO considers relevant and shall include facts and circumstances that will assist the audit agency in performing its function. The audit agency shall develop requested information and may make any further accounting reviews it considers appropriate. After its review, the

audit agency shall submit written comments and recommendations to the TCO. When a formal examination of settlement proposals valued under the threshold for obtaining certified cost or pricing data is not warranted, the TCO will perform or have performed a desk review and include a written summary of the review in the termination case file.

(b) The TCO shall refer subcontract settlements received for approval or ratification to the appropriate audit agency for review and recommendations when:

(1) The amount exceeds the threshold for obtaining certified cost or pricing data; or

(2) The TCO determines that a complete or partial accounting review is advisable. The audit agency shall submit written comments and recommendations to the TCO. The review by the audit agency does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review.

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Billing Code: 6820-EP

[FR Doc. 2016-22070 Filed: 9/13/2016 8:45 am; Publication Date: 9/14/2016]