Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to add two additional examples of when field pricing support audits of subcontract proposals may be appropriate. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Olson, at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–37, FAR case 92–002.

SUPPLEMENTARY INFORMATION:

A. Background

An amendment to the FAR was published in the Federal Register at 59 FR 14457, March 28, 1994, as a proposed rule with a request for comments. Three responses were received. Each supported the proposed rule.

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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and certified cost or pricing data and field pricing support are not required.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Part 15 is amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 15 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).

2. Section 15.806–3 is amended in paragraph (a)(3) by removing ''or''; in paragraph (a)(4) by removing the period and inserting a semicolon; and by adding paragraphs (a) (5) and (6) to read as follows:

15.806–3 Field pricing reports.

(a) * * *

(5) The contractor or higher tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing, especially the failure to perform adequate cost analyses of proposed subcontract costs or to perform subcontract analyses prior to negotiation of the prime contract with the Government; or

(6) A lower tier subcontractor has been cited as having significant estimating system deficiencies.

* * * * *

[FR Doc. 96–1021 Filed 1–25–96; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 90–37; FAR Case 92–017; Item VIII]

RIN 9000–AF79

Federal Acquisition Regulation; Overhead Should-Cost Reviews

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 have agreed to amend the Federal Acquisition Regulation (FAR) to add guidance on overhead should-cost reviews. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–37, FAR case 92–017.

SUPPLEMENTARY INFORMATION:

A. Background

An amendment to FAR 15.810 was published in the Federal Register at 59 FR 16388, April 6, 1994, as a proposed rule with a request for comments. Six responses were received. The Councils' analysis of those comments did not result in any revisions to the proposed rule previously published.

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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts awarded to small entities rarely are subject to program or overhead should-cost reviews.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Part 15 is amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 15 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).

2. Section 15.810 is revised to read as follows:

15.810 Should-cost review.

15.810–1 General.

(a) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods. During traditional reviews, local contract audit

and contract administration personnel primarily base their evaluation of forecasted costs on an analysis of historical costs and trends. In contrast, should-cost reviews do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(b) There are two types of should-cost reviews—program should-cost review (see 15.810–2) and overhead should-cost review (see 15.810–3). These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

15.810–2 Program should-cost review.

(a) Program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually incurred in the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(b) A program should-cost review should be considered, particularly in the case of a major system acquisition (see part 34), when—

(1) Some initial production has already taken place;

(2) The contract will be awarded on a sole-source basis;

(3) There are future year production requirements for substantial quantities of like items;

(4) The items being acquired have a history of increasing costs;

(5) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(6) Sufficient time is available to plan and conduct the should-cost review adequately; and

(7) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(c) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(d) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer (ACO) a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(e) When a program should-cost review is planned, the contracting officer should state this fact in the acquisition plan (see subpart 7.1) and in the solicitation.

15.810–3 Overhead should-cost review.

(a) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, facilities and equipment, depreciation, plant maintenance and security, taxes, and general and administrative activities. It is normally used to evaluate and negotiate a forward pricing rate agreement (FPRA) with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(b) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

(1) Dollar amount of Government business.

(2) Level of Government participation.

(3) Level of noncompetitive Government contracts.

(4) Volume of proposal activity.

(5) Major system or program.

(6) Mergers, acquisitions, takeovers.

(7) Other conditions, *e.g.*, changes in accounting systems, management, or business activity.

(c) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, identify inefficient and uneconomical practices, and recommend corrective action. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating a FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90–37; FAR Case 92–606; Item IX]

RIN 9000–AG78

Federal Acquisition Regulation; SBA Responsibility, Certificate of Competency Requests

AGENCY: 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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to reflect approval authority of the Small Business Administration (SBA) regional offices to issue Certificate of Competency (COC) Determinations as provided in 13 CFR Part 125. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.