

- 18 AAC 50.205. Certification (effective 10/01/2004) except (b)
- 18 AAC 50.215. Ambient Air Quality Analysis Methods (effective 10/29/2010)
- Table 5. Significant Impact Levels (SILs)
- 18 AAC 50.220. Enforceable Test Methods (effective 10/01/2004)
- 18 AAC 50.225. Owner-Requested Limits (effective 12/09/2010) except (c) through (g)
- 18 AAC 50.230. Preapproved Emission Limits (effective 07/01/2010) except (d)
- 18 AAC 50.235. Unavoidable Emergencies and Malfunctions (effective 10/01/2004)
- 18 AAC 50.240. Excess Emissions (effective 10/01/2004)
- 18 AAC 50.245. Air Episodes and Advisories (effective 10/01/2004)
- Table 6. Concentrations Triggering an Air Episode

### Article 3. Major Stationary Source Permits

- 18 AAC 50.301. Permit Continuity (effective 10/01/2004) except (b)
- 18 AAC 50.302. Construction Permits (effective 12/09/2010)
- 18 AAC 50.306. Prevention of Significant Deterioration (PSD) Permits (effective 12/09/2010) except (c) and (e)
- 18 AAC 50.311. Nonattainment Area Major Stationary Source Permits (effective 10/01/2004) except (c)
- 18 AAC 50.316. Preconstruction Review for Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (effective 12/01/2004) except (c)
- 18 AAC 50.321. Case-By-Case Maximum Achievable Control Technology (effective 12/01/04)
- 18 AAC 50.326. Title V Operating Permits (effective 12/01/2004) except (c)(1), (h), (i)(3), (j)(5), (j)(6), (k)(1), (k)(3), (k)(5), and (k)(6)
- 18 AAC 50.345. Construction, Minor and Operating Permits: Standard Permit Conditions (effective 11/09/2008)
- 18 AAC 50.346. Construction and Operating Permits: Other Permit Conditions (effective 12/09/2010)
- Table 7. Standard Operating Permit Condition

### Article 4. User Fees

- 18 AAC 50.400. Permit Administration Fees (effective 07/01/2010) except (a)(2), (a)(5), (j)(2) through (j)(5), (j)(8), and (j)(13)
- 18 AAC 50.403. Negotiated Service Agreements (effective 07/01/2010)
- 18 AAC 50.410. Emission Fees (effective 07/10/2010)
- 18 AAC 50.499. Definition for User Fee Requirements (effective 01/29/2005)

### Article 5. Minor Permits

- 18 AAC 50.502. Minor Permits for Air Quality Protection (effective 12/09/2010) except (b)(1) through (b)(3), (b)(5), (d)(1)(A) and (d)(2)(A)
- 18 AAC 50.508. Minor Permits Requested by the Owner or Operator (effective 12/07/2010)
- 18 AAC 50.510. Minor Permit—Title V Permit Interface (effective 12/09/2010)
- 18 AAC 50.540. Minor Permit: Application (effective 12/09/2010)

- 18 AAC 50.542. Minor Permit: Review and Issuance (effective 12/09/2010) except (a), (b), (c), and (d)
- 18 AAC 50.544. Minor Permits: Content (effective 12/09/2010)
- 18 AAC 50.560. General Minor Permits (effective 10/01/2004) except (b)

### Article 9. General Provisions

- 18 AAC 50.990. Definitions (effective 12/09/2010)

\* \* \* \* \*

[FR Doc. 2011-3004 Filed 2-9-11; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 24

[FAR Case 2009-004; Docket 2010-0089, Sequence 2]

RIN 9000-AL59

### Federal Acquisition Regulation; Enhancing Contract Transparency

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

**ACTION:** Advance notice of proposed rulemaking; withdrawal.

**SUMMARY:** DoD, GSA, and NASA are issuing this document to summarize and respond to the comments received in response to the advance notice of proposed rulemaking published in the *Federal Register* at 75 FR 26916, May 13, 2010. This information was used to determine if the FAR should be amended to provide for further transparency in Government contracts.

DoD, GSA, and NASA acknowledge the comments and solutions provided and will take this information into account, at a later date, in determining if the FAR should be amended to further enhance transparency in Government contracting.

At this time, DoD, GSA, and NASA do not plan to amend the FAR because some of the existing acquisition systems at <http://www.acquisition.gov> provide certain information on Government contracts that is readily available to the public, and most of the content of a contract solicitation or contract action not already available on one of the acquisition systems at <http://www.acquisition.gov> is either standard FAR terms and conditions available at <https://www.acquisition.gov/far/>

[index.html](#), agency specific terms and conditions available from the contracting agency Web site, or sensitive information that may be releasable under FOIA.

**DATES:** The advance notice of proposed rulemaking published in the *Federal Register* at 75 FR 26916, May 13, 2010, is withdrawn as of February 10, 2011.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Michael 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 FAR Case 2009-004.

### SUPPLEMENTARY INFORMATION:

#### I. Background

DoD, GSA, and NASA published an advance notice of proposed rulemaking in the *Federal Register* (75 FR 26916, May 13, 2010) requesting information that would assist in determining how best to amend the FAR to enable public posting of contract actions, should such posting become a requirement in the future, without compromising (1) contractors' proprietary and confidential commercial or financial information or (2) Government-sensitive information. The transparency effort is intended to promote efficiency in Government contracting consistent with the Administration's memorandum entitled *Transparency and Open Government* (January 21, 2009, available at: [http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment/](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/)).

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.

#### Discussion of Public Comments

In response to the May notice, 15 respondents, including Government agencies, industry associations, advocacy groups, and private individuals, submitted a total of 44 comments. The comments fall into nine categories, each of which is discussed in the following sections.

#### 1. Public Meeting

*Comments:* Two respondents commented on the usefulness of a public meeting. The first respondent favored a public meeting so that the costs associated with publicly posting contracts could be addressed. Another respondent stated that holding a public meeting on the methods by which contracts will be made public and the types of information that should be

publicly accessible would allow various stakeholders to share different viewpoints on the topic. The respondent stated that, if such a meeting is held, it would like to be a presenter.

*Response:* Only two respondents addressed the issue of a public meeting, and both were only moderately supportive on the topic. Because there were only two respondents that recommended a public meeting, and in view of the overall comments about this transparency effort, a public meeting will not be held at this time.

## 2. Automatic Preference For/Against Disclosure

*Comments:* Respondents expressed a wide variety of preferences. One respondent stated that several agencies post an electronic copy of contract award documents in the agency Freedom of Information Act (FOIA) Reading Room (if the contract has been requested a minimum of three times and a redacted copy is available electronically). The same respondent also noted that some agencies post their contracts immediately because they are commercial purchases using published catalogs, which means that the prices are public information.

A second respondent noted that certain proposal information and source selection information must be protected. The respondent further stated that protections apply to information obtained to determine reasonableness of price; trade secrets; privileged or confidential manufacturing processes and techniques; commercial and financial information that is privileged or confidential, including unit pricing; names of individuals providing past performance information; and classified information relevant to national security.

A third respondent recommended that the Government provide open public access to information on the contracting process, including actual copies of contracts rather than coded summary data, as well as contracting officers' decisions and justifications. The respondent recommended making *USAspending.gov* the one-stop shop for public Federal contract spending information, by posting actual copies of contracts, task and delivery orders, modifications, amendments, other transaction agreements, grants, and leases, including price and cost information, proposals, solicitations, award decisions and justifications (including all documents related to contracts awarded with less than full and open competition and single-bid contract awards), audits, performance and responsibility data, and other

related Government reports. The respondent conceded that the Government should protect classified information and other information that would potentially cause substantial harm to a contractor, but only when those exceptions are not outweighed by the public benefit that would be realized by this disclosure. The respondent believed that the burden should be placed on prospective contractors to justify withholding information from public view.

*Response:* DoD, GSA, and NASA note that the comments cover various perspectives on transparency in Government contracting—from publishing everything to publishing nothing without first undertaking a complete FOIA analysis. Specific issues associated with the recommendations summarized above have been addressed in the context of other public comments that follow.

## 3. Protect Unclassified Information

*Comment:* Three respondents expressed concern that any publication of contract documents would have a high likelihood of compromising proprietary information. Even if posting of contracts did not expose proprietary information, one respondent was concerned that it could expose military or other similar operations that could have national security implications, even though the published information, *per se*, was not classified. A third respondent noted that there is a significant body of unclassified Government information that also should be considered for protection; this respondent made reference to the advance notice of public rulemaking for Defense Federal Acquisition Regulation Supplement (DFARS) Case 2008–D028, Safeguarding Unclassified Information.

*Response:* DoD, GSA, and NASA understand the importance of protecting unclassified information. The processes for doing so and the identification of what must be protected are under consideration in FAR Case 2009–022, and DFARS Case 2008–D028.

## 4. Transparency or FOIA Analysis

*Comments:* The majority of respondents expressed concern about addressing transparency initiatives outside the context of the Freedom of Information Act. Concerns focused around whether there is a need to conduct a FOIA analysis prior to making a determination on the disclosure of protected information in an effort to meet transparency initiatives.

*Response:* DoD, GSA, and NASA understand that the FOIA regulations and procedures and the Executive Order

12600, Predisclosure Notification Procedures for Confidential Commercial Information, must be closely examined by the FOIA experts and adequately addressed as consideration is being given to what contract documents to make available to the public.

## 5. A Transparency Requirement Would Reduce Competition

*Comments:* Two respondents stated that creating a mandate for companies to post their contracts to public sites would place these companies in the position of sometimes choosing not to bid on Government procurements to avoid the disclosure of their sensitive competitive and/or proprietary data. This would have the effect of limiting or reducing competition.

*Response:* DoD, GSA, and NASA take note of this concern but do not agree with this conclusion. Transparency could have the opposite effect and enhance competition.

## 6. A Posting Requirement Is an Administrative Burden and Will Increase Costs for Both Contractors and Government Agencies

*Comments:* Some respondents maintained that requiring public posting of all contract actions would result in significant cost and administrative burdens, both for contractors and for the Government, and in addition, would involve unnecessary duplication of effort.

Two respondents contended that the effort and expense in the redaction and posting process would be significant and challenging. One of these respondents noted that, “with more than 30 million transactions issued by the Government annually, the redaction process alone would be overwhelming.” The other respondent stated that the review and defense of confidential information contained within each contract would be a major undertaking, assuming a process similar to that now required by FOIA. A third respondent commented on the administrative costs and burden of posting, but also added that the training and oversight necessary to implement such a process, and the likely surge in public inquiries as a result of public posting of actions, would further compound these challenges. The same respondent also predicted a great deal of “legal wrangling” over the posting of proprietary information, which could delay the award of, or initiation of work under, contracts.

A respondent predicted that the posting requirement would add work to an already overburdened acquisition workforce, and another respondent

contended that it would detract from the contracting officer's primary responsibility to award and manage contracts.

A respondent maintained that public posting of contract actions would be a duplicative administrative process because contract information is currently available through several venues, including FedBizOpps (FBO), *USASpending.gov*, and the Federal Procurement Data System (FPDS), and that these systems provide sufficient transparency while retaining the protection of information that should be considered in the contracting process. Another respondent commented that it finds it difficult to identify what would be made public with a mandatory public posting requirement that is not already publicly available. The respondent stated that the majority of information in a contract action is either located in the solicitation posted to FedBizOpps or is standard Federal Acquisition Regulation (FAR) contract language available for viewing at <https://www.acquisition.gov/far>. The respondent deemed the majority of information beyond what is in the solicitation and the FAR to be information that should be protected from disclosure. Two respondents took exception to the idea—as stated in the ANPR—that the transparency effort is intended “to promote efficiency in Government contracting.” The respondents do not acknowledge any direct correlation between posting contracts online and improving efficiency and spending.

*Response:* DoD, GSA, and NASA take note of this concern. The cost increases mentioned will be considered in any determination concerning contract posting requirements. As mentioned, contract information is either located in the solicitation posted to FedBizOpps at <http://www.fedbizopps.gov> or is standard FAR contract language and terms and conditions are available at <https://www.acquisition.gov/far>. However, awarded contract documents such as the statement of work, detailed contract line item descriptions, terms and conditions, deliverables, contractor proposals from the awardee, or other information that resides with the awarding contract agency may be available under a FOIA request.

#### 7. Governmentwide Integrated Electronic System

*Comments:* Three respondents supported a posting requirement. One of these recommended that only the total value of the contract be posted. Another respondent suggested posting a non-proprietary version of contracts “on the

web” for at least one year after award. The same respondent believed that “all we need to do is write a line of code or a few lines of code into the existing contracting database that removes all of the proprietary information and allows the user to download or print a stripped version of it.” In addition, a respondent suggested that, in order to store and provide access to this information, the Government must shift to a Governmentwide integrated electronic system that would create and store pre- and post-award contracting records. The expanded system should permit, according to the respondent, automatic redactions only of the most protected information or data fields, including classified information and other information that would potentially cause substantial harm to a contractor, but only when those exceptions are not outweighed by the public benefit that would be realized by the disclosure of such information.

*Response:* The respondents recommended a variety of information and solutions for posting the information. DoD, GSA, and NASA recognize the need for transparency in Government contracting information and believe these recommendations require additional thought by our system experts to determine the cost benefit analysis, capabilities analysis of existing systems, etc., to determine if the recommended solution can be implemented in the Government's current integrated acquisition environment. The Government is working to improve its collection of contracting information, see the new System for Award Management (SAM), at <http://www.acquisition.gov>.

#### 8. Posting Poses Significant Risks to Federal Employees

*Comments:* Two respondents maintained that a mandatory requirement for public posting of contract actions would expose Government employees to risks of criminal fines or penalties.

One respondent contended that the safeguards suggested by DoD, GSA, and NASA in the ANPR fall short of applying FOIA procedures to the proposed posting requirements and, as a result, will cause Government employees to bear increased risks related to improper disclosure of protected information. The respondent quoted the Trade Secrets Act, 18 U.S.C. 1905, explaining that it prohibits the release of confidential information and imposes criminal fines and possible imprisonment, as well as termination of employment, for Government employees who disclose confidential

information. The respondent suggested that a “FOIA-like review and redaction process,” though burdensome to Government and industry, would be necessary to avoid risk to Government employees.

The other respondent contended that Government employees may remain at risk if alternatives to the FOIA exemption 4 analysis are not adopted for purposes of public posting. This is because exemption 4 of FOIA is co-extensive with the Trade Secrets Act, which prohibits Government personnel from releasing contractor trade secrets and making them personally liable if that information is released. The respondent noted that the responsible Government agency employee would be at risk if required to publicly post a contract without express contractor authorization.

*Response:* DoD, GSA, and NASA take note of this concern and will consider this issue if measures are taken to enhance transparency in Government contracting.

#### 9. Alternatives Proposed

a. *Comments:* One respondent opposed the requirement to publicly post contracts. However, the respondent proposed two alternatives to diminish the level of effort required. The first alternative posed was to state plainly in the solicitation that every page of a successful offeror's proposal not marked as proprietary would be posted on the Web. This approach gives contractors notice prior to proposal submission. The respondent's second alternative was to ask the successful offeror, at the time of award, to submit a redacted copy of the contract for public posting. Central to this alternative is the recognition that the contractor need not submit a detailed justification for its redactions but merely a declaration that the contractor has in good faith provided a redacted copy according to the current FOIA law.

*Response:* DoD, GSA, and NASA take note of these alternatives and may consider each approach in determining how best to enhance transparency in this area.

b. *Comment:* Somewhat similar to the previous respondent's first alternative, a respondent suggested that a contracting officer could post contracts online if the Government established the solicitation in such a way that offerors were required, in their proposals, to segregate anything that the vendor deems proprietary, keeping it in a separate section or attachment of the proposal. This approach would enable the majority of the contract to be posted online immediately. Then, if a FOIA

request was made subsequently for the material not posted, the Government's review and redaction would be made simpler by looking over just the section or attachment not posted initially.

*Response:* DoD, GSA, and NASA take note of this approach, but believe it relies entirely on the successful offeror's judgment, and it does not address the Government's requirement to protect classified information or other, unclassified information that may require safeguarding.

c. *Comment:* Eight other respondents proposed specific alternatives in lieu of publishing contracts. One respondent opposed posting of any information because it would have the effect of releasing contractors' pricing information. Another respondent believed that the current posting requirement for contract/order award information (contract number, awardee information, total amount of award) was sufficient and that additional information should not be released. Another respondent would be more conservative and post only the total value of the contract.

One respondent suggested exempting entire classes of contracts from the posting requirement. This respondent suggested that contracts awarded using the sixth exemption from full and open competition should not be posted. A fifth respondent proposed that the Government must find a way to ensure the protection of an entity's information that supports pending patents in addition to protecting competition-sensitive pricing or technical information.

A respondent suggested that solicitations include a clear statement that every page not marked as proprietary will be posted on the Web or, in the alternative, ask the successful offeror, at the time of award, to submit a redacted copy of the contract for public posting. The seventh respondent recommended redacting (presumably by the Government) all confidential and proprietary information and any item associated with national security prior to posting contracts.

The eighth respondent stated its preference for avoiding a contract posting requirement entirely but suggested, if posting is inevitable, that the Government—

1. Add a module to FedBizOpps where the successful offeror could post a redacted contract, and enforce the posting requirement by withholding payment on the contractor's first invoice until the redacted contract has been posted;

2. Establish a threshold, e.g., \$10 million, below which contracts need not be posted; and

3. Require posting of only the statement of work (SOW)/performance work statement (PWS) and deliverable schedule, but give contracting officers authority to exempt a SOW/PWS from the posting requirement if it contained proprietary information.

*Response:* DoD, GSA, and NASA are appreciative of the respondents that provided specific alternatives for our consideration. Any contract-posting initiative must give consideration to the costs involved (in technology and software as well as the time of contractor and Government employees) and the risks associated with posting this information (e.g., lawsuits against the Government for inadvertently releasing information that could be damaging to national security and/or the competitive positions of companies doing business with the Government). DoD, GSA, and NASA advocate a judicious approach to establishing contract-posting requirements, one that will appropriately conserve resources and identify information that should be protected from general release to the public. Our assessment is that any contract posting requirement, at a minimum, should involve each of the elements proposed by the eighth respondent above, i.e., a high dollar threshold, a requirement for only the successful offeror to redact the contract and/or proposal that will be posted, and an incentive for the successful offeror to do so.

No posting requirement can be successful without protections for both contractor and Government employees. Necessary protections for information and personnel involve, at a minimum, a FOIA analysis, which is time consuming and requires senior analysts and attorneys. DoD, GSA, and NASA are concerned, too, that the on-going efforts to identify protections essential for safeguarding unclassified information are not yet sufficiently mature that such efforts can be bypassed to establish a contract-posting requirement prior to guidance on unclassified information. To avoid inadvertent disclosures, the Government would be required to review contractor-redacted documents before such items are posted to a public Web site. The contract or contractor's proposal may contain information that requires protection beyond trade secrets or proprietary information.

## II. Review of Existing Databases

DoD, GSA, and NASA extensively researched existing contracting related databases, confining the search to those

that are fully available to the general public, in order to determine the extent of information on Government contract actions that is currently available. While there are approximately nine acquisition systems available at <http://www.acquisition.gov> that capture contracting information, and some of the information in these systems is available to the public, DoD, GSA, and NASA focused on four such Web sites. These are—(1) FedBizOpps; (2) *USASpending.gov*; (3) GSA eLibrary; and (4) Federal Procurement Data System (FPDS).

1. *FedBizOpps.* This is a publicly available Web site at <http://www.fbo.gov> where many of the Government's solicitations are posted. There are several exceptions to the posting requirement; these are located at FAR 5.202, e.g., disclosure would compromise the national security. Both active and archived solicitations are available. Each solicitation is identified with a procurement classification code, e.g., 42 is fire-fighting, rescue, and safety equipment. In addition, FedBizOpps includes contract award information. This Web site is where agencies are required to post justifications for less than full-and-open competition (Justification and Approval, or J&A) and associated documentation, as well as sources-sought notices. Vendors are able to search for and retrieve posted J&As according to specific criteria, such as J&A authority, posted date range, and contract award date.

2. *USASpending.gov:* This Web site was established pursuant to the Federal Funding Accountability and Transparency Act of 2006 (FFATA). FFATA required a single searchable Web site, accessible to the public—at no cost to access—to include each Federal award. The specific information provided at *USASpending.gov* includes—

- The name of the award recipient.
- The amount of the award.
- The date the award was signed.
- The agency making the award.
- The location of the entity receiving the award.
- A unique identifier of the entity receiving the award.
- The product or service code for the supplies or services being purchased.
- A description of the award.
- If a modification to an existing award, the reason for the modification.

## 3. GSA eLibrary

*GSA eLibrary* (formerly "Schedules e-Library") is the online source for the latest contract award information for—

- GSA Schedules;

- Department of Veterans Affairs (VA) Schedules; and
- Technology Contracts, including Governmentwide Acquisition Contracts (GWACs), Network Services and Telecommunications Contracts, and Information Technology (IT) Schedule 70.

GSA eLibrary is available 24 hours a day, seven days a week to provide up-to-date information on which suppliers have contracts and what items are available, by using various search options, *i.e.*—

- Keywords;
- Contract number;
- Contractor/manufacturer name;
- Schedule name, Schedule number, category/sub-category name, or category number/special item number (SIN); or
- Technology contract name, contract number, or category name/number.

GSA eLibrary also provides an alphabetical listing of available contractors, allowing customers to easily locate all Schedule and technology contracts for a particular company. An updated category guide is designed to facilitate searches for specific groups of items. Other features include:

- Access to information on millions of supplies (products) and services;
- Information on the latest Schedule program changes, including a “News” area;
- Access to the complete list of all GSA and Veterans Affairs Schedules from the “View Schedule contracts” link;
- Links to technology contracts—IT Schedule 70, the complete list of GWACs, and network services and telecommunications contracts;
- Links to GSA Advantage!® Online Shopping for eBusiness and eBuy, GSA’s electronic Request For Quotation (RFQ) system;
- Ability to download current PDF versions of Schedules;
- Ability to download contract award information in an Excel format by category;
- Links to contractor Web sites, email addresses, and text files containing contract terms and conditions; and
- Identification of Schedule contractors participating in cooperative purchasing and/or disaster recovery purchasing.

#### 4. Federal Procurement Data System (FPDS)

FPDS is an online central repository containing a searchable collection of Federal contracts with a potential value of \$3,000 or more, including all subsequent modifications. It is available at <http://www.fpds.gov>. FPDS provides

public access to many standard and custom reports about these actions, products/services purchased, vendor socioeconomic information, dates of award and completion, and dollar values.

DoD, GSA, and NASA would also like to mention two other contracting databases—the Recovery Web site and the Federal Awardee Performance and Integrity Information System (FAPIS).

FAPIS was established under section 872 of the National Defense Authorization Act of 2009, and includes specific information on the integrity and performance of covered Government agency contractors and grantees information on defective cost or pricing contractor convictions, terminations for default, and administrative agreements reached in lieu of suspension or debarment. Section 3010 of Public Law 111–212, making supplemental appropriations for Fiscal Year 2010, requires the posting of FAPIS information “on a publicly available Internet Web site.”

Also, the Recovery Web site, at <http://www.Recovery.gov>, was established pursuant to the American Recovery and Reinvestment Act of 2009 (the Act), to foster greater accountability and transparency in the use of funds made available in the Act. The Web site has been operational since February 17, 2009. This Web site gives taxpayers user-friendly tools to track Recovery funds, showing how and where the funds are spent. In addition, the site offers the public an opportunity to report suspected fraud, waste, or abuse related to Recovery funding.

#### List of Subjects in 48 CFR Part 24

Government procurement.

Dated: February 3, 2011.

**Millisa Gary,**

*Acting Director, Office of Governmentwide Acquisition Policy.*

[FR Doc. 2011–2900 Filed 2–9–11; 8:45 am]

**BILLING CODE 6820–EP–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 1834

**RIN 2700–AD29**

#### Major System Acquisition; Earned Value Management

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** NASA proposes to revise the requirements in the NASA FAR

Supplement (NFS) for contractors to establish and maintain an Earned Value Management System (EVMS) for firm-fixed-price (FFP) contracts. The proposal recognizes the reduction in risk associated with FFP contracts and intends to relieve contractors of an unnecessary reporting burden.

**DATES:** Interested parties should submit comments on or before April 11, 2011 to be considered in formulation of the final rule.

**ADDRESSES:** Interested parties may submit comments, identified by RIN number 2700–AD29, via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Carl Weber (Mail stop 5K80), NASA Headquarters, Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by e-mail to [carl.c.weber@nasa.gov](mailto:carl.c.weber@nasa.gov).

**FOR FURTHER INFORMATION CONTACT:** Carl Weber, NASA, Office of Procurement, Contract Management Division (Suite 5K80); (202) 358–1784; e-mail: [carl.c.weber@nasa.gov](mailto:carl.c.weber@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Earned Value Management (EVM) is a performance-based tool that gives agency managers an early warning of potential cost overruns and schedule delays during the execution of their investments. EVM requires agencies to integrate information about the scope of work with cost, schedule, and performance information so that they may compare planned spending with actual spending, isolate the source of performance problems, and take corrective actions in a timely manner.

Federal Acquisition Regulation (FAR) Subpart 34.2 and Office of Management and Budget (OMB) Circular A–11 require agencies to measure the cost and schedule performance of major investments with development activity using EVM. These policies are implemented by NASA through NASA Procedural Requirement (NPR) 7120.5, which requires program managers to perform appropriate EVM analyses of their investments, and NASA FAR Supplement 1834.201, which requires contractors to have an Earned Value Management System (EVMS) for major acquisitions with development or production work, including development or production work for flight and ground support systems and components, prototypes, and institutional investments (facilities, IT infrastructure, etc.).