

DOL rate is required by statute (the Inflation Adjustment Act); GSA, DoD, and NASA have no authority to change the rate.

#### V. 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.

#### VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

#### VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

#### VIII. 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 Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: April 25, 2018.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22 and 52 as set forth below:

■ 1. The authority citation for parts 22 and 52 continues to read as follows:

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

### PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 2. Amend section 22.302 by revising paragraph (a) to read as follows:

#### 22.302 Liquidated damages and overtime pay.

(a) When an overtime computation discloses underpayments, the responsible contractor or subcontractor must pay the affected employee any unpaid wages and pay liquidated damages to the Government. The contracting officer must assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the statute. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

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### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.222–4 by revising the date of the clause and paragraph (b) to read as follows:

#### 52.222–4 Contract Work Hours and Safety Standards—Overtime Compensation.

\* \* \* \* \*

#### Contract Work Hours and Safety Standards—Overtime Compensation (May, 2018)

\* \* \* \* \*

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary

penalty for inflation no later than January 15 each year.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 49

[FAC 2005–98, FAR Case 2015–039; Item IV; Docket No. 2015–0039, Sequence No. 1]

RIN 9000–AN26

#### Federal Acquisition Regulations: Audit of Settlement Proposals

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule 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 align with the threshold for obtaining certified cost or pricing data.

**DATES:** *Effective:* May 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–98, FAR Case 2015–039.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DOD, GSA, and NASA published a proposed rule in the **Federal Register** at 81 FR 63158 on September 14, 2016, 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, 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.

##### II. Discussion and Analysis

No public comments were submitted in response to the proposed rule. Therefore, there are no changes from the proposed rule made in the final rule.

### III. Expected Cost Savings

This final rule impacts contractors subject to audits of their termination settlement proposals. The rule is administrative in nature, because it raises a threshold. This rule eliminates termination settlements audits between \$100,000 and the threshold for obtaining certified cost or pricing data, currently \$750,000. Contractors will save costs associated with the preparation and support for the termination settlement audits. This will also enable faster final settlement payments to contractors, thereby improving contractor cash flow.

### IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new solicitation provisions or clauses, or impact any existing provisions or clauses.

### V. 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.

### VI. Executive Order 13771

Pursuant to E.O. 13771, this rule is a deregulatory action. Information on the expected cost savings of this action can be found in section III of the preamble.

### VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a final regulatory flexibility analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule amends FAR 49.107, Audit of prime contract settlement proposals and subcontract settlements, to raise the dollar threshold for the audit of prime contract settlement proposals and subcontract settlements submitted in the event of contract termination from \$100,000 to the threshold for obtaining certified cost or pricing data set

forth in FAR 15.403–4(a)(1), which is currently \$750,000. The rule is necessary to reduce the administrative burdens associated with termination settlement proposals.

No public comments were received in response to the initial regulatory flexibility analysis.

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.* Since the rule raises the audit threshold, even fewer small businesses will be subject to audits of their termination settlement proposals. It is estimated that an average of 4 small entities per year will be relieved from the requirements of supporting an audit of a contract settlement proposal, which is a minute fraction of all contracts awarded to small businesses in a typical year.

The rule imposes no reporting, recordkeeping, or other information collection requirements.

There are no known significant alternatives to the rule. The impact of this rule on small business is not expected to be significant.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

### VIII. Paperwork Reduction Act

This 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 Subjects in 48 CFR Part 49

Government procurement.

Dated: April 25, 2018.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

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

### PART 49—TERMINATION OF CONTRACTS

■ 1. The authority citation for 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 49.107 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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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Chapter 1

[Docket No. FAR 2018–0001, Sequence No. 2]

#### Federal Acquisition Regulation: Federal Acquisition Circular 2005–98; Small Entity Compliance Guide

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

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of DOD, GSA,