

disclosure of classified information, or information subject to export controls) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (e.g., size, format) does not make it cost-effective or practicable for contracting officers to provide access to the solicitation through the GPE;

(iii) Agency procedures specify that the use of FedTeDS does not provide sufficient controls for the information to be made available and an alternative means of distributing the information is more appropriate; or

(iv) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest.

* * * * *

■ 4. Amend section 5.207 by revising paragraph (c)(18) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(18) If the technical data required to respond to the solicitation will not be furnished as part of such solicitation, identify the source in the Government, such as FedTeDS (<https://www.fedteds.gov>), from which the technical data may be obtained.

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PART 7—ACQUISITION PLANNING

■ 5. Amend section 7.105 by revising paragraph (b)(15) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(15) *Government-furnished information.* Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors. Indicate which information that requires additional controls to monitor access and distribution (e.g., technical specifications, maps, building designs, schedules, etc.), as determined by the agency, is to be posted via the Federal Technical Data Solution (FedTeDS) (see 5.102(a)).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005-09; FAR Case 2004-030; Item II; Docket FAR-2006-0020]

RIN 9000-AK21

Federal Acquisition Regulation; FAR Case 2004-030, Definition of Information Technology

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 to convert to a final rule without change, an interim rule amending the Federal Acquisition Regulation (FAR) to revise the definition of "Information technology" to reflect the changes to the definition resulting from the enactment of Public Law 108-199, Consolidated Appropriations Act, 2004. Section 535(b) of Division F of Public Law 108-199 permanently revises the term "Information technology", which is defined at 40 U.S.C. 11101, to add "analysis and evaluation" and to clarify the term "ancillary equipment."

DATES: *Effective Date:* April 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2005-09, FAR case 2004-030. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 43577 on July 27, 2005. The interim rule revised the definition of "Information technology" to reflect the changes to the definition resulting from the enactment of Public Law 108-199, Consolidated Appropriations Act, 2004. The new language at Section 535(b) of Division F of Public Law 108-199 permanently revises the term "Information technology", which is defined at 40 U.S.C. 11101, to add "analysis and evaluation" and to clarify the term "ancillary equipment."

The Councils received one public comment in response to the interim rule. The commenter indicated that the addition of the words "analysis, evaluation" was omitted from the changes to the definition of information technology in FAR 2.101(b) in the **Federal Register** on page 43578. Although not reprinted in full FAR text of the definition of information technology, change instruction 2 of the **Federal Register** notice added "analysis, evaluation" to the two appropriate portions of the definition. The Code of Federal Regulations text was changed in accordance with this instruction, and no further changes are required.

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.

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 within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only revises and clarifies the definition for information technology resulting from the enactment of Public Law 108-199, Consolidated Appropriations Act, 2004. This is a minor technical change to the definition. We did not receive any comments on this issue from small business concerns or other interested parties.

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. 3501, *et seq.*

List of Subjects in 48 CFR Part 2

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 2, which was published in the **Federal Register** at 70

FR 43577, July 27, 2005, is adopted as a final rule without change.

[FR Doc. 06-3679 Filed 4-18-06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 14, 37, and 52

[FAC 2005-09; FAR Case 2004-021; Item III; Docket FAR-2006-0020]

RIN 9000-AK25

Federal Acquisition Regulation; FAR Case 2004-021, OMB Circular A-76

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 provide language that is consistent with OMB Circular A-76 (Revised), *Performance of Commercial Activities*, dated May 29, 2003.

DATES: *Effective Date:* May 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAC 2005-09, FAR case 2004-021. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 70 FR 43107, July 26, 2005. One commenter submitted two comments in response. The first comment is that "7.302(a)(4) [sic] and 52.207-1(d) reference 'contest(s)'. Should that be protests?" The word "contest" was meant, not "protest." The A-76 Circular created an additional procedure called a "contest", discussed at Attachment B, paragraph F.

The second comment says that there is a conflict between the language in paragraph (c) of the provision at FAR 52.207-1 which states that, if a performance decision resulting from standard competition favors a private

sector offeror, a contract will be awarded, and paragraph (c) of the provision at FAR 52.207-2 which states that, if a performance decision resulting from a streamlined competition favors private sector performance, the contracting officer will either award a contract or issue a competitive solicitation. The Councils see no conflict and note that the language is consistent with the Circular. In a streamlined competition, an agency may estimate the cost of private sector performance by conducting market research or by soliciting cost proposals in accordance with the FAR (OMB Circ. A-76, Att. B, para. C.1.b.). If the performance decision favors private sector performance, the contracting officer may either award a contract resulting from the solicitation of cost proposals or issue a competitive solicitation to determine a private sector provider (OMB Cir. A-76, Att. B, para. C.3.d.(1).) Therefore, the final rule adopts the proposed rule language without change.

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.

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 within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any costs on either small or large businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) 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. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 5, 7, 14, 37, and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 5, 7, 14, 37, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 5, 7, 14, 37, and 52 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).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b), in the definition "Inherently governmental function", by removing the last sentence in paragraph (2).

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 5.205 by revising paragraph (e) to read as follows:

5.205 Special situations.

* * * * *

(e) *Public-private competitions under OMB Circular A-76.* (1) The contracting officer shall make a formal public announcement for each streamlined or standard competition. The public announcement shall include, at a minimum, the agency, agency component, location, type of competition (streamlined or standard), activity being competed, incumbent service providers, number of Government personnel performing the activity, name of the Competitive Sourcing Official, name of the contracting officer, name of the Agency Tender Official, and projected end date of the competition.

(2) The contracting officer shall announce the end of the streamlined or standard competition by making a formal public announcement of the performance decision. (See OMB Circular A-76.)

* * * * *

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.105 by revising paragraph (b)(9) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(9) *Inherently governmental functions.* Address the consideration given to Subpart 7.5.

* * * * *

■ 5. Revise Subpart 7.3 to read as follows:

Subpart 7.3—Contractor Versus Government Performance

Sec.

7.300 [Reserved]

7.301 Definitions.

7.302 Policy.