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[Proposed Rules]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 34, 42, and 52

[FAR Case 2004-019]

RIN 9000-AJ99

Federal Acquisition Regulation; Earned Value Management System

(EVMS)

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

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ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement earned value management system (EVMS) policy. FAR coverage is essential to help standardize the use of EVMS across the Government. The proposed rule specifically impacts contracting officers, program managers, and contractors with earned value management systems.

DATES: Interested parties should submit comments in writing on or before June 7, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2004-019 by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

E-mail: farcase.2004-019@gsa.gov. Include FAR case 2004-019 in the subject line of the message.

Fax: 202-501-4067.

Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2004-019 in all correspondence related to this case.

All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501-4082. Please cite FAR case 2004-019.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed FAR changes are necessary to implement EVMS requirements in OMB Circular A-11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets, and the supplement to Part 7, the Capital Programming Guide. Title V of the Federal Acquisition Streamlining Act of 1994 (FASA) requires agency heads to approve or define the cost, performance, and schedule goals for major acquisitions and achieve, on average, 90 percent of the cost, performance and schedule goals established. The Clinger-Cohen Act of 1996 requires the Director of OMB to develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments for information systems for the life of the system. OMB Circular A-11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets and its supplement, Capital Programming Guide, were written to meet the requirements of FASA and the Clinger-Cohen Act. OMB Circular A-11, Part 7, sets forth the policy, budget justification, and reporting requirements that apply to all agencies of the executive branch of the Government that are subject to executive branch review, for major capital acquisitions.

This rule establishes standard EVMS provisions, a standard clause and a set of guidelines for Governmentwide use. The guidelines include the requirement and timing of an Integrated Baseline Review (IBR), whether prior to or post award. Due to the time and cost of performing IBRs, when IBRs are conducted prior to award, consideration should be given to limiting the competitive range. The concept of conducting the

IBR before the contract is awarded is a change from the traditional approach of conducting IBRs only after contract award. We specifically request comments on the feasibility of conducting IBRs before award. Should all contracts require IBRs before award? If not, on what type of contracts should IBRs be conducted before award? Would a modified IBR be a better choice before award? What should be the down-select policy to limit the number of offerors subject to an IBR before award?

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 proposed changes to FAR Parts 2, 7, 34, 42, and 52 may 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 requires contractors, and subcontractors identified by the contracting officer, to implement earned value management and set up earned value management systems within their organizations to plan and manage the work under major acquisitions. Thus, small businesses will be required to set up such systems if awarded a major acquisition contract or a large subcontract under a major acquisition. However, an analysis of data in the Federal Procurement Data System (FPDS) on actions and dollars on contracts

above \$20 million for supplies and equipments, IT services and construction, areas where EVMS is likely to be applied, indicated that small business only received 3.8 percent of the \$36.8 billion and 5.8 percent of the 345 actions. Because FPDS does not collect data on EVMS use, the data above is only an approximation of the effect on small business. The Councils are seeking comments on the potential impact of having to implement a program management system that meets the EVMS guidelines in ANSI/EIA Standard 748-A.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The proposed FAR changes are necessary to implement earned value management systems (EVMS) requirements in OMB Circular A-11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets, and the supplement to Part 7, the Capital Programming Guide.

Currently, only DoD, NASA, and a few other agencies have developed EVMS clauses and policy. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are therefore proposing revising FAR Parts 2, 7, 34, 42, and 52 to include guidance for EVMS. This rule establishes standard EVMS provisions, a standard clause and a set of guidelines for Governmentwide use.

Title V of the Federal Acquisition Streamlining Act of 1994 (FASA) requires agency heads to approve or define the cost, performance, and schedule goals for major acquisitions and achieve,

on average, 90 percent of the cost, performance and schedule goals established. The Clinger-Cohen Act of 1996 requires the Director of OMB to develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments for information systems for the life of the system. OMB Circular A-11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets and its supplement, Capital Programming Guide, were written to meet the requirements of FASA and the Clinger-Cohen Act. OMB Circular A-11, Part 7, sets forth the policy, budget justification, and reporting requirements that apply to all agencies of the executive branch of the Government that are subject to executive branch review, for major capital acquisitions. The proposed FAR changes are necessary to implement EVMS requirements in OMB Circular A-11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets, and the

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supplement to Part 7, the Capital Programming Guide.

The impact to small businesses by this rule will be dependent upon the thresholds established by the agencies or identified by OMB as the agencies' major acquisitions/investments. OMB does not expect EVMS on acquisitions at or below \$20 million total cost. However, OMB or the agency may identify a lower dollar acquisition as a major acquisition for application of EVMS. Therefore the impact for this

rule has not been ascertained across all agencies. Small businesses may be impacted by their lack of certification of an EVM System at time of award or the cost of the requirement for an IBR prior to award where an agency does not absorb the cost of the IBR. Likewise, agencies will be affected by the possible cost of IBRs for which they absorb the costs. Therefore, the number of small businesses with EVM Systems is uncertain, based on current information.

This proposed FAR rule will not impose any additional reporting or recordkeeping requirements on 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. The rule provides for the standardization of EVMS across the Government. Contractors are required to maintain EVMS, where applicable. These systems are unique to the contractor. The reporting is specific to the contractor's system and is not the reporting of identical information collected for a public collection. There is no set of identical questions for 10 or more contractors. The rule allows contractors to use a standardized EVMS across Government. The requirements for these systems are usually imposed on high dollar acquisitions. Therefore, only a few small entities would be required to comply with the cost/schedule/performance requirements for these systems.

There are no Federal rules that duplicate, overlap, or conflict with the proposed rule.

The FAR Secretariat 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 FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 7, 34, 42, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAR case 2004-019), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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, 7, 34, 42, and 52

Government procurement.

Dated: April 1, 2005.

Rodney Lantier,

Director, Contract Policy Division, General Services Administration.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 7, 34, 42, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 34, 42, and 52 are revised 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. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition ``Earned value management system" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Earned value management system means a project management tool that effectively integrates the project scope of work with cost, schedule and performance elements for optimum project planning and control. The qualities and operating characteristics of earned value management systems are described in American National Standards Institute (ANSI)/ Electronics Industries Alliance (EIA) Standard-748, Earned Value Management systems. (See OMB Circular A-11, Part 7.)

* * * * *

PART 7--ACQUISITION PLANS

3. Amend section 7.105 by adding a sentence to the end of paragraph (b)(10) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(10) * * * If an earned value management system is to be used, discuss the methodology the Government will employ to analyze and use the earned value data to assess and monitor contract performance. In addition, discuss how the offeror's/contractor's EVMS will be verified for compliance with the American National Standards Institute/ Electronics Industries Alliance (ANSI/EIA) standard, and the timing and conduct of Integrated Baseline Reviews (whether prior to or post award). See 34.202.

* * * * *

PART 34--MAJOR SYSTEM ACQUISITION

4. Revise section 34.000 to read as follows:

34.000 Scope of part.

This part describes acquisition policies and procedures for use in acquiring major systems consistent with OMB Circular No. A-109; and the use of earned value management systems in acquisitions designated as major acquisitions consistent with OMB Circular A-11.

5. Amend section 34.005-2 by adding paragraph (b)(6) to read as follows:

34.005-2 Mission-oriented solicitation.

* * * * *

(b) * * *

(6) Require the use of an earned value management system that meets the guidelines of ANSI/EIA Standard-748 (current version at time of solicitation) (see 42.1106) for earned value management systems and reporting requirements).

* * * * *

6. Add subpart 34.X to read as follows:

Subpart 34.X--Earned Value Management Systems

Sec.

34.X01 Policy.

34.X02 Integrated Baseline Reviews.

34.X03 Solicitation provisions and contract clause.

34.X01 Policy.

(a) Earned value management system (EVMS) is required in acquisitions designated, in accordance with agency procedures, as major acquisitions subject to OMB Circular A-11.

(b) When EVMS is required, the agency shall consider the use of an Integrated Baseline Review (IBR).

34.X02 Integrated Baseline Reviews.

(a) The Integrated Baseline Review (IBR) is meant to verify the technical content and the realism of the related performance budgets, resources, and schedules. It should provide a mutual understanding of the inherent risks in offerors'/contractors' performance plans and the underlying management control systems, and it should formulate a plan to handle these risks.

(b) The IBR is a joint assessment by the offeror or contractor, and the Government, of the--

(1) Ability of the project's technical plan to achieve the

objectives of the scope of work;

(2) Adequacy of the time allocated for performing the defined tasks to successfully achieve the project schedule objectives;

(3) Ability of the Performance Measurement Baseline (PMB) to successfully execute the project and attain cost objectives, recognizing the relationship between budget resources, funding, schedule, and scope of work;

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(4) Availability of personnel, facilities, and equipment when required, to perform the defined tasks needed to execute the program successfully; and

(5) The degree to which the management process provides effective and integrated technical/schedule/cost planning and baseline control.

(c) Conduct the IBR in accordance with agency procedures.

34.X03 Solicitation provisions and contract clause.

(a) The contracting officer shall insert a provision that is substantially the same as the provision at 52.234-X1, Notice of Earned Value Management System, in solicitations for contracts that require the contractor to use an earned value management system (EVMS) and for which the Government may require an Integrated Baseline Review (IBR)

after contract award. When an offeror is required to provide an EVMS plan as part of its proposal, the contracting officer shall forward a copy of the plan to the cognizant Administrative Contracting Officer (ACO) or responsible Federal department or agency and obtain their assistance in determining the adequacy of the proposed EVMS plan.

(b) The contracting officer shall insert a provision that is substantially the same as the provision at 52.234-X2, Notice of Earned Value Management System-Pre-Award IBR, in solicitations for contracts that require the contractor to use an EVMS and for which the Government will require an IBR prior to contract award. When an offeror is required to provide an EVMS plan as part of its proposal, the contracting officer shall forward a copy of the plan to the cognizant ACO or responsible Federal department or agency and obtain their assistance in determining the adequacy of the proposed EVMS plan.

(c) The contracting officer shall insert a clause that is substantially the same as the clause at 52.234-X3, Earned Value Management System, in solicitations and contracts that require a contractor to use an earned value management system (EVMS).

PART 42--CONTRACT ADMINISTRATION AND AUDIT SERVICES

7. Amend section 42.1106 by adding paragraph (d) to read as follows:

42.1106 Reporting requirements.

* * * * *

(d) For major acquisitions contracting officers shall require contractors to submit earned value management system monthly reports (see subpart 34.2 and OMB Circular A-11, part 7, section 1H4, Exhibit 300).

PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Add sections 52.234-X1, 52.234-X2, and 52.234-X3 to read as follows:

52.234-X1 Notice of Earned Value Management System.

As prescribed in 34.X03(a) use the following provision:

Notice of Earned Value Management System (Date)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) or a Federal department or agency has recognized that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (current version at time of solicitation).

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall--

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

(End of provision)

52.234-X2 Notice of Earned Value Management System--Pre-Award IBR.

As prescribed in 34.X03(b), use the following provision:

Notice of Earned Value Management System, Pre-Award IBR (Date)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) or a Federal department or agency has recognized that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (current version at time of solicitation).

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall--

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review and approve the offeror's plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected subject to the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

(d) The Government will conduct an Integrated Baseline Review (IBR), as designated by the agency, prior to contract award. The objective of the IBR is for the Government and the Contractor to jointly assess technical areas, such as the Contractor's planning, to ensure complete coverage of the contract requirements, logical scheduling of the work activities, adequate resources, methodologies for earned value (budgeted cost for work performed (BCWP)), and identification of inherent risks.

(End of provision)

52.234-X3 Earned Value Management System.

As prescribed in 34.X03(c), insert the following clause:

Earned Value Management System (Date)

(a) In the performance of this contract the Contractor shall use an earned value management system (EVMS) to manage the contract that at the time of contract award has been recognized by the cognizant Administrative Contracting Officer (ACO) or a Federal department or agency as compliant with the guidelines in ANSI/EIA Standard-748 (current version at time of award) and the Contractor will submit reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO or a Federal department or agency as complying with EVMS guidelines (or the Contractor does not have an existing cost/schedule control system that is

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compliant with the guidelines in ANSI/EIA Standard-748 (current version at time of award)), the Contractor shall apply the system to the contract and shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS guidelines referenced in paragraph (a) of this clause.

(c) Agencies may conduct Integrated Baseline Reviews (IBR). If a pre-award IBR has not been conducted, such a review shall be scheduled as early as practicable after contract award, but not later than 180 days after award. The Contracting Officer may also require an IBR at (1) exercise of significant options or (2) incorporation of major modifications. Such reviews will normally be scheduled before award of the contract action.

(d) Unless a waiver is granted by the ACO or Federal department or agency, Contractor proposed EVMS changes require approval of the ACO or Federal department or agency, prior to implementation. The ACO or Federal department or agency, shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO or Federal department or agency, the Contractor shall disclose EVMS changes to the ACO or Federal department or agency at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: [Insert list

of applicable subcontractors.]

(End of clause)

[FR Doc. 05-6864 Filed 4-7-05; 8:45 am]

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