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THE FAR CORNER

Final Rules

One of the final rules issued on September 30, 2005, Implementation of the Anti-Lobbying Statute, amends FAR 52.203-11 and FAR 52.203-12 to prohibit funds from federal contracts, loans, or grants from being used for lobbying the executive and legislative branches of the government and requires recipients of federal contracts, loans, or grants above \$100,000 to disclose lobbying activities using non-federal funds. It was effective September 30, 2005. The full text can be found at <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-19471.htm>.

Three other final rules issued on September 30, 2005 and effective October 31, 2005 are addressed in our GCAAlert (http://www.gaffeycpa.com/GCAAlerts/Oct_07_2005.htm) issued October 7, 2005.

- Reimbursement of Relocation Costs on a Lump-sum Basis (FAR 31.205-35)
- Training and Education Cost Principle (FAR 31.205-44)
- Accounting for Unallowable Costs (FAR 31.201-6). See the Basic Statistical Sampling White Paper at www.gaffeycpa.com/WhitePaper/Basic_Statistical_Sampling.pdf

Proposed Rules

Two proposed rules were issued September 26, 2005 with public comments due back November 25, 2005.

FAR Case 2003-027 – Acquisition of Commercial Services – This proposed rule revising FAR 12.207 would permit the use of time and material (T&M) and labor hour (LH) contracts for commercial services when the service is acquired under a competitively awarded contract and the contracting officer (1) determines that no other authorized contract-type is suitable, (2) includes a ceiling price in the contract or order, and (3) authorizes any future change in the ceiling price only upon documented determination that the change is in the best interest of the government. The rule also permits the use of indefinite-delivery contracts when rates are established for commercial services acquired on a T&M or LH basis.

FAR Case 2004-15 – Payments Under T&M and LH Contracts – This proposed rule revises FAR 16.601 and FAR 52.232-7 to define “direct materials” and “materials on T&M contracts. It also adds the Allowable Cost and Payment clause at FAR 52.216-7 to T&M and LH contracts.

The full text of these two proposed rules and instructions for submitting comments can be found at <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-18965.htm> and <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-18964.htm> respectively.

Another proposed rule was issued on September 19, 2005 with public comments due back November 18, 2005.

FAR Case 2004-025 – Government Property – This proposed rule substantially reduces the impact of the current Part 45 FAR provisions by simplifying procedures, reducing recordkeeping and eliminating requirements related to the management of Government property in the possession of contractors. It is amended to “implement a policy that fosters efficiency, flexibility, innovation, and creativity, while continuing to protect the Government’s interest in the public’s property.”

The FAR clauses at 52.245-1, Property records; 52.245-2, Government Property (Fixed Price Contracts); 52.245-5, Government Property (Cost Reimbursement, Time and Material, or Labor Hour Contracts); "and 52.245-19, Government Property Furnished- As Is”, were combined to form a new clause at 52.245-1, Government Property. A new clause was added at 52.245-2, Government Property (Installation Operations for Services) to address contracts designed for military base operating and installation-level contracts. FAR clauses 52.245-3, 52.245-4, 52.245-5, 52.245-6, 52.245-7, 52.245-8, 52.245-10, 52.245-11, 52.245-12, 52.245-13, 52.245-14, 52.245-15, 52.245-16, 52.245-17 and 52.245-18 have been eliminated in their entirety.

FAR 31.205-19, Insurance and Indemnification, has been modified to indicate that “unless the Government has determined that the contractor’s property management practices are inadequate and/or present an undue risk to the Government, the cost of insurance is allowable when the contractor is liable and the insurance does not cover loss, damage, destruction, or theft which results from willful misconduct or lack of good faith on the part of the contractor’s managerial personnel.” The present cost principle does not reference the adequacy of the contractor’s property management practices in determining the allowability of insurance costs.

The full text of this proposed rule and instructions for submitting comments can be found at <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-18516.htm>