

and contract administration personnel primarily base their evaluation of forecasted costs on an analysis of historical costs and trends. In contrast, should-cost reviews do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(b) There are two types of should-cost reviews—program should-cost review (see 15.810-2) and overhead should-cost review (see 15.810-3). These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

15.810-2 Program should-cost review.

(a) Program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually incurred in the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(b) A program should-cost review should be considered, particularly in the case of a major system acquisition (see part 34), when—

- (1) Some initial production has already taken place;
- (2) The contract will be awarded on a sole-source basis;
- (3) There are future year production requirements for substantial quantities of like items;
- (4) The items being acquired have a history of increasing costs;
- (5) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(6) Sufficient time is available to plan and conduct the should-cost review adequately; and

(7) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(c) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(d) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer (ACO) a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(e) When a program should-cost review is planned, the contracting officer should state this fact in the acquisition plan (see subpart 7.1) and in the solicitation.

15.810-3 Overhead should-cost review.

(a) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, facilities and equipment, depreciation, plant maintenance and security, taxes, and general and administrative activities. It is normally used to evaluate and negotiate a forward pricing rate agreement (FPRA) with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(b) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

- (1) Dollar amount of Government business.
- (2) Level of Government participation.

(3) Level of noncompetitive Government contracts.

(4) Volume of proposal activity.

(5) Major system or program.

(6) Mergers, acquisitions, takeovers.

(7) Other conditions, e.g., changes in accounting systems, management, or business activity.

(c) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, identify inefficient and uneconomical practices, and recommend corrective action. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating a FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90-37; FAR Case 92-606; Item IX]

RIN 9000-AG78

Federal Acquisition Regulation; SBA Responsibility, Certificate of Competency Requests

AGENCY: 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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to reflect approval authority of the Small Business Administration (SBA) regional offices to issue Certificate of Competency (COC) Determinations as provided in 13 CFR Part 125. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-37, FAR case 92-606.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 19.602-2(b)(3) currently requires that all COC requests over \$500,000 be forwarded to the SBA Central Office for a decision on issuance. The issuance of COC's by the SBA is governed by 13 CFR Part 125, which authorizes regional SBA offices to issue COC's within their delegated authority. This rule merely reflects existing internal SBA procedures.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAC 90-37, FAR case 92-606, in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Part 19 is amended as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.602-2 is amended as follows:

(a) The paragraph designation "(a)" is removed;

(b) Paragraph (b) is removed;
(c) Paragraph (c) is redesignated as (d) and revised; and
(d) Paragraphs (a)(1) through (a)(3) are redesignated as (a), (b), and (c), respectively.

19.602-2 Issuing or denying a certificate of competency (COC).

* * * * *

(d) Notify the concern and the contracting officer that the COC is denied or is being issued.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 90-37; FAR Case 93-308; Item X]

RIN 9000-AG70

Federal Acquisition Regulation; Mentor Protégé Program

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

ACTION: Interim rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to allow mentor firms under the Department of Defense Pilot Mentor-Protégé Program to be granted credit toward subcontracting goals under small business subcontracting plans entered into with any executive agency. The rule also will permit mentor firms to award subcontracts on a noncompetitive basis to protégé firms under Department of Defense or other contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective Date:* January 26, 1996.

Comment Due Date: To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before March 26, 1996.

ADDRESSES: Comments should be submitted to: General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT:

Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 37, FAR case 93-308.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements Section 814(c) of Public Law 102-190, which amended the Small Business Act at 15 U.S.C. 637(d)(11) to authorize certain costs incurred by a mentor firm under the Department of Defense Mentor-Protégé Program to be credited toward subcontracting goals for awards to small disadvantaged businesses. This rule also further implements Section 831(f)(2) of Public Law 101-510 which permits mentor firms to award subcontracts on a noncompetitive basis to its protégés under Department of Defense or other contracts.

B. Regulatory Flexibility Act

The interim rule is not expected to have 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 revisions apply to mentor firms under the DOD Pilot Mentor-Protégé Program, and these firms generally are not small entities. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-37, FAR case 93-308) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any reporting or recordkeeping requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA); and the Administrator of the National Aeronautics and Space Administration (NASA) that, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. However, public comments received in response