

to this interim rule will be considered in formulating the final rule. The rule is necessary to further implement 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 Department of Defense Mentor-Protégé Program firm to be credited toward subcontracting goals for awards to small disadvantaged businesses, and 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.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 and 52 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).

PART 19—SMALL BUSINESS PROGRAMS

2. Section 19.702 is amended by adding paragraph (d) to read as follows:

19.702 Statutory requirements.

* * * * *

(d) As authorized by 15 U.S.C. 637(d)(11), certain costs incurred by a mentor firm in providing developmental assistance to a Protégé firm under the Department of Defense Pilot Mentor-Protégé Program, may be credited as subcontract awards to a small disadvantaged business for the purpose of determining whether the mentor firm attains a small disadvantaged business goal under any subcontracting plan entered into with any executive agency. However, the mentor firms must have been approved by the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology, OUSD (A&T)SADBU, Room 2A340, The Pentagon, Washington, DC 20301-3061, (703) 697-1688, before developmental assistance costs may be credited against subcontract goals.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. 52.244-5 is amended by revising the clause to read as follows:

52.244-5 Competition in Subcontracting.

* * * * *

Competition in Subcontracting (Jan 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

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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 92-019; Item XI]

RIN 9000-AF45

Federal Acquisition Regulation; Subcontracting Plans

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 have agreed to amend the Federal Acquisition Regulation (FAR) to expand the circumstances when subcontracting plans may be required from and negotiated with more than the apparently successful offeror and to add a clause alternate for use when subcontracting plans are required with initial proposals. 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 92-019.

SUPPLEMENTARY INFORMATION:

A. Background

An amendment to FAR 19.705-2, 19.708, and 52.219-9 was published in the Federal Register at 59 FR 16390, April 6, 1994, as a proposed rule with a request for comments. Two responses were received. The Councils' analysis of those comments did not result in any revisions to the proposed rule.

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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because subcontracting plans are not required from small business concerns.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a revised information collection requirement concerning 9000-0006 was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and approved through March 31, 1998.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 and 52 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).

PART 19—SMALL BUSINESS PROGRAMS

2. Section 19.705-2 is amended by revising paragraph (d) to read as follows:

19.705-2 Determining the need for a subcontracting plan.

* * * * *

(d) In solicitations for negotiated acquisitions, the contracting officer may require the submission of subcontracting plans with initial offers, or at any other time prior to award. In determining when subcontracting plans should be required, as well as when and

with whom plans should be negotiated, the contracting officer shall consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small, small disadvantaged and women-owned small business concerns to participate, and the burden placed on offerors.

3. Section 19.708 is amended in paragraph (b)(1)(iii) by revising "has been" to read "is" and by adding a sentence at the end of the paragraph to read as follows:

19.708 Solicitation provisions and contract clauses.

* * * * *

(b)(1) * * *

(iii) * * * When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705-2(d), the contracting officer shall use the clause with its Alternate II.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.219-9 is amended by adding Alternate II at the end of the section to read as follows:

52.219-9 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan.

* * * * *

Alternate II (MAR 1996). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan, which separately addresses subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28 and 52

[FAC 90-37; FAR Case 92-014; Item XII]

RIN 9000-AF78

Federal Acquisition Regulation; Insurance—Liability to Third Persons

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 delete a solicitation provision and prescriptive language pertaining to liability insurance under cost-reimbursement contracts. 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: Mr. Peter O'Such at (202) 501-1759 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 92-014.

SUPPLEMENTARY INFORMATION:

A. Background

The deleted FAR language applied only to cost-reimbursement contracts for research and development awarded to state agencies or charitable institutions that claim partial or total immunity from tort liability. For these entities, Alternates I and II of 52.228-7, Insurance—Liability to Third Persons, limit the contract's insurance requirements and the Government's obligation to indemnify for third party liability. A proposed rule was published in the Federal Register at 59 FR 16392, April 6, 1994. No substantive comments were received in response to the proposed rule.

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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the FAR language being deleted applies only to cost-reimbursement contracts for research and development that are awarded to entities which, by virtue of their status as either an agency of the state or as a charitable institution, claim partial or total immunity from tort liability under such contracts. These entities are believed to be few in number.

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 the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 28 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 28 and 52 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).

PART 28—BONDS AND INSURANCE

28.311-1 [Removed]

28.311-2 and 28.311-3 [28.311-2, 28.311-3 Redesignated as 28.311-1, 28.311-2]

2. Section 28.311-1 is removed and sections 28.311-2 and 28.311-3 are redesignated as 28.311-1 and 28.311-2, respectively.

28.311-1 [Amended]

3. The newly designated 28.311-1 is amended by removing the last two sentences.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.228-6 [Removed and reserved]

4. Section 52.228-6 is removed and reserved.

5. Section 52.228-7 is amended in the introductory paragraph by removing the citation "28.311-2" and inserting "28.311-1"; by revising the date of the clause heading; by revising paragraphs