

Contracts. The SWAT team concluded that these clauses did not clearly convey the Government's intent that payments to subcontractors by large business prime contractors were not billable to the Government until the contractor had actually paid the subcontractors.

This final rule amends FAR 52.216-7, Allowable Cost and Payment, and FAR 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts, to clarify that payments to subcontractors by large business prime contractors are not billable until the contractors have actually paid the subcontractors. The rule exempts, however, contractors who are awarded construction contracts that include the clauses at FAR 52.216-7, Allowable Cost and Payment, and FAR 52.232-7, Prompt Payment for Construction Contracts. Alternate I of FAR 52.216-7 provides for reimbursement of construction prime contractors for subcontract costs prior to the subcontractors actually being paid, as long as the prime contractor has included a provision in its subcontracts that requires that the subcontractor be paid within seven days of the prime contractor's receipt of payment from the Government.

A proposed rule was published in the Federal Register on December 21, 1995 (60 FR 66472). Five sources submitted public comments. All comments were considered in developing the final 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 within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only applies to large business prime contractors under time-and-materials, labor-hour, and cost-reimbursement type contracts.

#### 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 16 and 52

Government procurement.

Dated: December 11, 1996.

Edward C. Loeb,

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 16 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 16 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 16—TYPES OF CONTRACTS

2. Section 16.307(a) is amended by redesignating the text as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

##### § 16.307 Contract clauses.

(a)(1) \* \* \*

(2) If the contract is a construction contract and contains the clause at 52.232-27, Prompt Payment for Construction Contracts, the contracting officer shall use the clause at 52.216-7 with its Alternate I.

\* \* \* \* \*

#### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.216-7 is amended by revising the clause date and paragraph (b)(1)(iii), and by adding Alternate I to read as follows:

##### 52.216-7 Allowable Cost and Payment.

\* \* \* \* \*

ALLOWABLE COST AND PAYMENT (FEB 1997)

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) The amount of progress and other payments that have been paid by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

\* \* \* \* \*

(End of clause)

*Alternate I* (FEB 1997). As prescribed in 16.307(a)(2), substitute the following paragraph (b)(1)(iii) for paragraph (b)(1)(iii) of the basic clause:

(iii) The amount of progress and other payments to the Contractor's subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the clause of this contract entitled "Prompt Payment for Construction Contracts." Payments shall be made by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

4. Section 52.232-7 is amended by revising the clause date and the second sentence of paragraph (b)(2) to read as follows:

##### § 52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.

\* \* \* \* \*

#### PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 1997)

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the contract only when cash, checks, or other form of payment has been made for such purchased items or services; however, this requirement shall not apply to a Contractor that is a small business concern.\* \* \*

\* \* \* \* \*

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#### 48 CFR Parts 19 and 52

[FAC 90-43; FAR Case 93-308; Item VI]

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 adopted as final with a change.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule continuing an interim rule which amended the FAR. The interim rule published as Item X of FAC 90-37 is finalized with minor clarifying revisions. This final rule permits a mentor firm under the DOD Pilot Mentor-Protégé Program to be granted credit toward subcontracting goals for certain costs incurred in providing developmental assistance to its Protégé firms and to award subcontracts on a noncompetitive basis to its Protégé firms. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** February 18, 1997.

**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 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, 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 mentor firms under the DOD Pilot 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 DOD or other contracts. An interim rule was published in the Federal Register on January 26, 1996 (61 FR 2637). One comment was received in response to the interim rule. As a result, in the second sentence of 19.702(d), the word "firms" was revised to read "Protégé agreement", and the address and telephone number were corrected. The clause at 52.244-5 is adopted as final without change.

#### 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 applies to participants in the DOD Pilot Mentor-Protégé Program. Presently, approximately 100 mentor firms and 240 protégé firms are enrolled in the program.

#### 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 19 and 52

Government procurement.

Dated: December 11, 1996.

Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Accordingly, the interim rule amending 48 CFR Parts 19 and 52 and published at 61 FR 2637, January 26, 1996, is adopted as a final rule with the following changes:

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 revising the last sentence of paragraph (d) to read as follows:

#### § 19.702 Statutory requirement.

\* \* \* \* \*

(d) \* \* \* However, the mentor-Protégé agreement must have been approved by the Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs) DUSD(I&CP)SADBU, Room 2A338, 3061 Defense Pentagon, Washington, DC 20301-3061, (703) 697-9383, before developmental assistance costs may be credited against subcontract goals.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### § 52.244-5 [Amended]

3. The clause date for 52.244-5 is revised to read "(DEC 1996)".

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#### 48 CFR Parts 19 and 52

[FAC 90-43, FAR Case 95-028, Item VII]  
RIN 9000-AH34

#### Federal Acquisition Regulation; Minority Small Business and Capital Ownership

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

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule that amends the Federal Acquisition Regulation (FAR) to reflect changes to the Small Business Administration's (SBA) regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) Program. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**DATES:** *Effective Date:* December 20, 1996.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the

address shown below on or before February 18, 1997 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-43, FAR case 95-028, in all correspondence related to this case.

**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 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 95-028.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On June 7, 1995, SBA published changes in their regulations at 13 CFR Parts 121 and 124, which cover the Minority Small Business and Capital Ownership Development Program (60 FR 29969). As a result of these modifications, the FAR has some inconsistencies regarding who is eligible for a particular 8(a) procurement. Amended FAR sections include: 19.801, 19.804-2, 19.804-3, 19.805-1, 19.805-2, 19.808-1, 19.809, 19.811-1, 19.811-3, 52.219-1, 52.219-11 (Alternate I), 52.219-12 (Alternate I), 52.219-17, and 52.219-18 (Alternate II).

##### B. Regulatory Flexibility Act

This interim rule is not expected to 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.* This rule does not impose any new requirements on contractors. The rule amends the FAR to reflect changes at 13 CFR 121 and 124 designed to streamline the operation of the 8(a) program and to ease certain restrictions perceived to be burdensome on Program Participants. The FAR is changed to eliminate inconsistencies with respect to who is eligible for particular 8(a) procurements; to eliminate obsolete definitions; and to eliminate coverage on certain aspects of the 8(a) program that are obsolete. 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 also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C.