

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(7) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) *Nondesignated country end product* means any end product that is not a U.S. made end product or a designated country end product.

(9) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(10) *Qualifying country* means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation (FAR) Supplement.

(11) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(12) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(13) *U.S. made end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the United States; or

(ii) In the case of an article that consists in whole or in part of materials from another

country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c) (1) The Contractor agrees to deliver under this contract only U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products unless, in its offer, it specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product other than a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product, unless—

(i) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(d) The offered price of end products listed under paragraph (c)(2) of the Trade Agreements Certificate provision of the solicitation must include all applicable duty, whether or not a duty-free entry certificate will be granted. The offered price of qualifying country, designated country, Caribbean Basin country, or NAFTA country end products for line items subject to the Trade Agreements Act, or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of U.S. made end products should not include duty for qualifying country components.

(End of clause)

ALTERNATIVE I (XXX 19XX). As described in 225.408(a)(4), delete Singapore from the list of designated countries in paragraph (a)(4) of the basic clause.

252.225-7035 [Amended]

20. Section 252.225-7035 is amended in the introductory text by revising the reference “225.408(a)(3)” to read “225.408(a)(5)”.

252.225-7036 [Amended]

21. Section 252.225-7036 is amended in the introductory text by revising the reference “225.408(a)(4)” to read “225.408(a)(6)”.

[FR Doc. 97-23656 Filed 9-8-97; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 833 and 852

RIN 2900-AI51

VA Acquisition Regulation: Department Protests

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Acquisition Regulations (VAAR) to delete coverage which duplicates or conflicts with the Federal Acquisition Regulation; to delete internal agency guidance to contracting officers; to delete obsolete references to the General Services Administration Board of Contract Appeals; to incorporate changes made by Federal Acquisition Circular (FAC) 90-40, Item XIII and FAC 90-45, Item XII; to publish VA policy regarding the availability of staff of the VA Board of Contract Appeals to serve as third party neutrals in alternative dispute resolution proceedings; and to update clauses and references. These changes will implement VA policy and are required to ensure that the VAAR corresponds with the requirements of the Federal Acquisition Regulation and public law.

DATES: Comments must be received on or before November 10, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to “RIN: 2900-AI51.” All written comments will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Don Kaliher; Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC 20420, (202) 273-8819.

SUPPLEMENTARY INFORMATION: As provided by Public Law 104-106, the Clinger-Cohen Act of 1996, the General Services Administration Board of Contract Appeals (GSBCA) no longer hears bid protests. Therefore, obsolete references to the GSBCA would be removed from the VAAR.

This proposed rule would clarify an existing VA procedure in 833.103(a), which allows an interested party to file

an initial protest at a level above the contracting officer, and, as required by FAR 33.103(d)(4), would add new clause 852.233-71, Alternate Protest Procedure, to inform bidders/offerors of the availability of this alternate protest procedure. This is one of the two methods discussed in FAR 33.103(d)(4) for providing an independent review of a protest. In addition, existing Department procedures for appealing a contracting officer's protest decision, which is the other method discussed in FAR 33.103(d)(4) for providing an independent review of a protest, would be clarified and relocated from 833.103(c) to new paragraph 833.103(f). Material in 833.103(c) which is internal agency guidance to contracting officers would be removed from the VAAR.

It is current VA practice to make available the administrative judges and hearing examiners of the VA Board of Contract Appeals (VABCA) to serve as neutral third parties when alternative dispute resolution (ADR) methods are used to resolve potential or actual contract disputes and appeals. This practice would be codified in VAAR at 833.214. In addition, as provided at FAR 33.103(c), this practice would be extended to bid protests at 833.103(b) and would make the administrative judges and hearing examiners of VABCA available to serve as neutral third parties when ADR is used to resolve bid protests.

This proposed rule would renumber current paragraph 833.103(b) as 833.103(c) and would make changes to the paragraph to comply with the requirements of FAR 33.103 (f)(1) and (f)(3). FAR paragraphs 33.103 (f)(1) and (f)(3) require that a justification or determination to award a contract or to continue contract performance after receipt of a protest shall be approved at a level above the contracting officer or by another official pursuant to agency procedures. Proposed paragraph 833.103(c) would revise and clarify who that approving official is within VA.

Paragraph 833.103(e) currently provides guidance to contracting officers on actions to take upon receipt of a protest after a contract has been awarded. FAR 33.103(f)(3) was recently revised to provide new guidelines on when a contract must be suspended upon receipt of a protest. This proposed rule would revise 833.103(e) to conform VAAR to, and comply with, these new requirements of FAR 33.103(f)(3).

VA provision 852.233-70, Protest Content, would be updated to conform to FAR 33.103(d)(2); VA clause 852.233-71, Alternate Protest Procedure, would be added to comply with the requirements of FAR

33.103(d)(4); and VA clause 852.236-73, Bonds, which duplicates new FAR clause 52.228-15, Performance and Payment Bonds, Construction, would be deleted.

This proposed rule would also update or change names and titles and make other minor clarifications.

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This proposed rule would have a minuscule effect, if any, on small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

List of Subjects

48 CFR Part 833

Administrative practices and procedure, Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping.

Approved: August 27, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR parts 833 and 852 are proposed to be amended as follows:

PART 833—PROTESTS, DISPUTES, APPEALS

Subpart 833.1—Protests

1. The authority citation for parts 833 and 852 continue to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

§ 833.102 [Amended]

2. Section 833.102 introductory text is amended by removing "852.233-2" and adding, in its place, "FAR provision 52.233-2". It is further amended by removing "or the GSA Board of Contract Appeals (GSBCA)"; and paragraph (b) is amended by removing "(95B)" and adding, in its place, "Acquisition Administration Team".

§ 833.103 [Amended]

3. In § 833.103, paragraph (a)(1) is amended by removing "," immediately following "contracting officer" and adding, in its place, "or, as an alternative, may request an independent review by filing a protest with"; by removing "Review Division, or" and adding, in its place, "Administration Team, or, for solicitations issued by the Office of Facilities Management,"; by

removing " , as appropriate"; and by adding at the end of the paragraph "A protest filed with the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer."

4. In § 833.103, paragraph (a)(2)(ii) is amended by removing "Review Division" and adding, in its place, "Administration Team"; paragraphs (a)(3) and (a)(4) are removed; paragraph (a)(5) is redesignated as paragraph (a)(3); newly redesignated paragraph (a)(3)(vi) is removed; paragraphs (a)(3)(vii) through (a)(3)(ix) are redesignated as paragraphs (a)(3)(vi), through (a)(3)(viii), respectively.

5. In § 833.103, paragraph (c) is removed; paragraph (b) is redesignated as a new paragraph (c) and is revised and a new paragraph (b) is added to read as follows:

§ 833.103 Protests to the Department.

* * * * *

(b) Where appropriate, alternative dispute resolution (ADR) procedures may be used to resolve protests at any stage in the protest process. The Department of Veterans Affairs Board of Contract Appeals (VABCA) is an independent and neutral entity within the Department of Veterans Affairs and is available to serve as the third party neutral (Neutral) for bid protests. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(c) *Action upon receipt of protest.* For protests filed with the contracting officer, the head of the contracting activity (HCA) shall be the approving official for the determinations identified in FAR 33.103(f)(1) and (f)(3). If the HCA is also the contracting officer, the approving official shall be the Deputy Assistant Secretary for Acquisition and Materiel Management. For protests filed with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, those individuals shall be the approving officials for the determinations identified in FAR 33.103(f)(1) and (f)(3).

* * * * *

6. In § 833.103, paragraph (d) is amended by removing "lodged" and adding, in its place, "filed"; by removing "he/she" each time it appears and adding, in its place, "the contracting officer"; by removing "Review Division" and adding, in its

place, "Administration Team"; and by removing "officer will" and adding, in its place, "officer shall".

7. In § 833.103, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 833.103 Protests to the Department.

* * * * *

(e) *Protest after award.* When a written protest is filed with the contracting officer after contract award:

(1) If FAR 33.103(f)(3) requires suspension of contract performance, the contracting officer shall seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis and, if successful, shall document the suspension with a supplemental agreement. If unsuccessful, the contracting officer shall issue a stop-work order in accordance with contract clause FAR 52.233-3, Protest After Award.

(2) If suspension of contract performance is not required by FAR 33.103(f)(3) and if the contracting officer determines that the award was proper, the contracting officer shall furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer shall advise the protester that the protester may appeal the determination to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management, or the Comptroller General, as specified in internal Department guidance.

(3) If suspension of contract performance is not required by FAR 33.103(f)(3) but the contracting officer determines that the award is questionable, the contracting officer may consult with the Office of the General Counsel (025) and shall advise the contractor of the protest and invite the contractor to submit comments and relevant information. The contracting officer shall submit the case promptly to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management, who may consult with the Office of the General Counsel (025) and who shall either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for a decision. The contracting officer shall

provide interested parties with a copy of the final decision.

(f) *Agency appellate review of contacting officer's protest decision.* An interested party may request an independent review of a contacting officer's protest decision by filing an appeal with the Deputy Assistant Secretary for Acquisition and Materiel Management or, for solicitations issued by the Office of Facilities Management, with the Chief Facilities Management Officer, Office of Facilities Management. To be considered timely, the appeal must be received by the Deputy Assistant Secretary for Acquisition and Materiel Management or, for solicitations issued by the Office of Facilities Management, by the Chief Facilities Management Officer, Office of Facilities Management, within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal. Appeals shall be addressed as provided in paragraphs (a)(2)(ii) or (iii) of this section. Appeals shall not extend GAO's timeliness requirements for appeals to GAO. By filing an appeal as provided herein, an interested party may waive its rights to further appeal to the Comptroller General at a later date. Agency responses to appeals submitted to the agency shall be reviewed and concurred in by the Office of the General Counsel (025).

§ 833.105 [Removed]

8. Section 833.105 is removed.

9. Section 833.106 is revised to read as follows:

§ 833.106 Solicitation provision.

(a) The contracting officer shall insert the provision at 852.233-70, Protest Content, in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 852.233-71, Alternate Protest Procedure, in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold.

Subpart 833-2—Disputes and Appeals

10. Section 833.214 is added to read as follows:

§ 833.214 Alternative dispute resolution (ADR).

(a) Contracting officers and contractors are encouraged to use alternative dispute resolution (ADR) procedures to resolve contract disputes before they become appealable disputes

by using the Department of Veterans Affairs' ADR Program.

(b) Under the Department's ADR Program, the Department of Veterans Affairs Board of Contract Appeals (VABCA or Board) Chair, who is the Department's Dispute Resolution Specialist, will appoint a Board member or hearing examiner (at no cost to either party) to serve as a Neutral to aid in resolving matters before they become appealable disputes. The administrative judges and hearing examiners are trained Neutrals and are available to assist in ADR proceedings.

(c) Under the ADR Program, the parties are able to select the ADR process they believe will help resolve the matter. Everything discussed during the ADR meeting is confidential. In the event a Board member serves as a Neutral in a matter that is not resolved using ADR, that Board member shall keep all discussions confidential and shall have no further input or contact with the parties or other Board members in subsequent Board activities (ref. the Administrative Dispute Resolution Act, 5 U.S.C. 571-583; and, Federal Acquisition Regulation, Subpart 33.2).

(d) The Department of Veterans Affairs and contractors are also encouraged to use ADR in disputes appealed to the VABCA.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.2—Texts of Provisions and Clauses

11. Section 852.233-70 is revised to read as follow:

§ 852.233-70 Protest content.

As prescribed in 833.106, insert the following provision in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold:

PROTEST CONTENT (XXX 1997)

(a) Any protest filed by an interested party shall:

(1) Include the name, address, fax number, and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or the protester's representative, and at least one copy;

(4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served;

(6) State the form of relief requested; and

(7) Provide all information establishing the timeliness of the protest.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(End of Provision)

12. Section 852.233-71 is added to read as follows:

§ 852.233-71 Alternate Protest Procedure.

As prescribed in 833.106, insert the following provision in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold:

ALTERNATE PROTEST PROCEDURE (XXX 1997)

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, or, for solicitations issued by the Office of Facilities Management, the Chief Facilities Management Officer, Office of Facilities Management, 810 Vermont Avenue, NW, Washington, DC 20420. The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

§ 852.236-73 [Removed]

13. Section 852.236-73 is removed.

[FR Doc. 97-23753 Filed 9-8-97; 8:45 am]

BILLING CODE 8320-01-U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 97-45; Notice 1]

RIN 2127-AG84

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Federal motor vehicle safety standard on lighting to permit asymmetrical headlamp beams on motorcycle headlighting systems. An amendment of this nature would allow upper and lower beams to be emitted by separate dedicated headlamps on either side of a motorcycle's vertical centerline or by separate off center light sources within a single headlamp that is located on the vertical centerline. This action implements the grant of a rulemaking

petition from Kawasaki Motors Corp. U.S.A. and represents a further step towards harmonization of Standard No. 108 with the lighting standards of other nations.

DATES: Comments are due October 24, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and must be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Safety Performance Standards, NHTSA (Phone: 202-366-5276).

SUPPLEMENTARY INFORMATION: Table IV of Motor Vehicle Safety Standard No. 108 specifies where motorcycle headlighting systems are to be located. If a motorcycle has a single headlamp, the headlamp must be mounted on the vehicle's vertical centerline. If two headlamps are provided, they must be symmetrically disposed around the vertical centerline. Under Standard No. 108, a center-mounted headlamp must provide upper and lower beams with a single light source, and each headlamp in a two-headlamp motorcycle headlighting system must provide both an upper and a lower beam with a single light source. In interpretation letters in 1994 and 1995, NHTSA advised Kawasaki Motors Corp. U.S.A. (Kawasaki) that a single-lamp headlighting system in which an upper beam or lower beam is provided by a single light source that is not on the vertical centerline is not permitted by Standard No. 108.

Kawasaki has developed a projector beam headlighting system which it wishes to offer on motorcycles that it sells in the United States. The system incorporates light sources that are not on the vertical centerline and that will typically be illuminated singly. The consequence is that the motorcycle will have a single-off center light source. Under the Kawasaki system, separate headlamps provide the upper and lower beam respectively, or separate light sources in a single headlamp, which lie on either side of the vertical centerline even if the headlamp itself is centered on it. Accordingly, Kawasaki has petitioned the agency for rulemaking to amend Standard No. 108 in a manner that would allow its asymmetrical headlighting system.

The agency has granted this petition. At the time that Standard No. 108 was issued, the predominant concern was that the headlighting system clearly identify a motorcycle as such when the vehicle was being operated at night.

Thus, the location of a single headlamp on the vertical centerline was justifiable to distinguish the motorcycle from an approaching passenger car whose left headlamp was inoperative. To assist oncoming drivers in detecting the nature of an approaching vehicle, Standard No. 108 also requires passenger cars and light trucks to have parking lamps, and requires the parking lamps to be illuminated when the headlamps are on. Motorcycles are not required to have parking lamps, and their appearance at night will differ in this respect from that of a four-wheeled motor vehicle. Kawasaki has assured the agency that, in markets where projector beam headlamps are common, there has been no increase in crashes because of misjudgment of a motorcycle's presence.

This assurance allows the agency to contemplate the advisability of allowing a single beam to be projected somewhere other than on the vertical centerline. Kawasaki has brought the agency's attention to the Official Journal of the European Communities, Council Directive 93/92/EEC dated 29 October 1993. This Directive allows separate upper and lower beam headlamps, but specifies that their "reference centers must be symmetrical in relation to the median longitudinal plane of the vehicle", and that the distance between the edges of the illuminating surfaces of the two headlamps must not exceed 200 mm., i.e., approximately 8 inches. Adoption of this maximum separation distance should ensure that asymmetrical beams remain relatively close to the vertical centerline of the vehicle and do not mislead oncoming drivers. It will also ensure that NHTSA's amendment of Standard No. 108 would be consistent with regulations of other nations concerning the same lighting specification.

The agency is therefore proposing that Standard No. 108 be amended in a manner that would allow Kawasaki to use the projector beam headlighting system. Although traditionally motorcycle headlighting requirements have been contained in Tables III and IV, paragraph S7.9 Motorcycles has been added to Standard No. 108 to contain and set apart all motorcycle lighting performance requirements for ease of reference. This purpose will be enhanced by specifying headlighting location requirements as well. Accordingly NHTSA proposes that a new paragraph S7.9.6 be added which will contain the previous location requirements specified in Table IV as modified by the proposed changes to accommodate Kawasaki's request, and as discussed above. A two-headlamp system in which each headlamp