

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 5. Amend section 52.204–7 by—
- a. Revising the date of the clause;
- b. Revising paragraph (a)(2) of the definition “Registered in the CCR database”; and
- c. Removing Alternate I.
- The revised and added text reads as follows:

52.204–7 Central Contractor Registration.

* * * * *

CENTRAL CONTRACTOR REGISTRATION (JUL 2006)

(a) * * *

Registered in the CCR database means that—

(1) * * *

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 10 and 19**

[FAC 2005–10; FAR Case 2006–003; Item II; Docket 2006–0020, Sequence 12]

Federal Acquisition Regulation; FAR Case 2006–003, Procedures Related to Procurement Center Representatives

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide internal procedures to cover situations when the FAR requires interaction with a procurement center representative and one has not been assigned to the procuring activity or contract administration office.

DATES: *Effective Date:* July 28, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2005–10, FAR case 2006–003. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends the Federal Acquisition Regulation to provide internal procedures to cover situations when the FAR requires interaction with a Small Business Administration procurement center representative and one has not been assigned to the procuring activity or contract administration office.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. 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. However, the Councils will consider comments from small entities concerning the affected FAR Parts 10 and 19 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–10, FAR case 2006–003), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 10 and 19

Government procurement.

Dated: June 20, 2006.

Ralph De Stefano,*Director, Contract Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 10 and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 10 and 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 10—MARKET RESEARCH

- 2. Amend section 10.001 by revising paragraph (c)(1) to read as follows:

10.001 Policy.

* * * * *

(c) * * *

(1) When performing market research, should consult with the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see 19.402 (a); and

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PART 19—SMALL BUSINESS PROGRAMS

- 3. Amend section 19.201 by revising the introductory text of paragraph (d)(5) to read as follows:

19.201 General Policy.

* * * * *

(d) * * *

(5) Work with the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) to—

* * * * *

- 4. Amend section 19.202–1 by revising the introductory text of paragraph (e)(1) and paragraph (e)(4) to read as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e)(1) Provide a copy of the proposed acquisition package to the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) at least 30 days prior to the issuance of the solicitation if—

* * * * *

(4) If the contracting officer rejects the SBA representative's recommendation made in accordance with 19.402(c)(2), the contracting officer shall document the basis for the rejection and notify the SBA representative in accordance with 19.505.

- 5. Amend section 19.202–2 by revising the last sentence in paragraph (a) to read as follows:

19.202–2 Locating small business sources.

* * * * *

(a) * * * This effort should include contacting the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)).

* * * * *

- 6. Amend section 19.402 by redesignating paragraph (a) as (a)(1); adding a new paragraph (a)(2); revising paragraph (b); and revising the second

sentence of paragraph (c)(2) to read as follows:

19.402 Small Business Administration procurement center representatives.

(a) * * *

(2) If a SBA procurement center representative is not assigned to the procuring activity or contract administration office, contact the SBA Office of Government Contracting Area Office serving the area in which the procuring activity is located for assistance in carrying out SBA policies and programs. See <http://www.sba.gov/GC/pcr.html> for the location of the SBA office servicing the activity.

(b) Upon their request and subject to applicable acquisition and security regulations, contracting officers shall give SBA procurement center representatives (or, if a procurement center representative is not assigned, see paragraph (a) of this section) access to all reasonably obtainable contract information that is directly pertinent to their official duties.

(c) * * *

(2) * * * If the SBA procurement center representative (or, if a procurement center representative is not assigned, see paragraph (a) of this section) believes that the acquisition, as proposed, makes it unlikely that small businesses can compete for the prime contract, the representative shall recommend any alternate contracting method that the representative reasonably believes will increase small business prime contracting opportunities. * * *

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■ 7. Amend section 19.501 by revising the last sentence in paragraph (b) and paragraph (f) to read as follows:

19.501 General.

* * * * *

(b) * * * A joint determination is one that is recommended by the Small Business Administration (SBA) procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) and concurred in by the contracting officer.

* * * * *

(f) At the request of an SBA procurement center representative, (or, if a procurement center representative is not assigned, see 19.402(a)) the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of the micro-purchase threshold that have not been unilaterally set aside for small business.

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■ 8. Amend section 19.503 by revising the last sentence in paragraph (d) to read as follows:

19.503 Setting aside a class of acquisitions for small business.

* * * * *

(d) * * * If there are any changes of such a material nature as to result in probable payment of more than a fair market price by the Government or in a change in the capability of small business concerns to satisfy the requirements, the contracting officer may withdraw or modify (see 19.506(a)) the unilateral or joint set-aside by giving written notice to the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) stating the reasons.

■ 9. Amend section 19.505 by revising paragraphs (a), (b), and (c)(1) to read as follows:

19.505 Rejecting Small Business Administration recommendations.

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) or breakout procurement center representative, written notice shall be furnished to the appropriate SBA representative within 5 working days of the contracting officer's receipt of the recommendation.

(b) The SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 working days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 working days. Pending issuance of a decision to the SBA representative, the contracting officer shall suspend action on the acquisition.

(c) * * *

(1) Within 2 working days, the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) may request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and

* * * * *

■ 10. Amend section 19.506 by revising the second sentence in paragraph (a) and paragraph (b) to read as follows:

19.506 Withdrawing or modifying small business set-asides.

(a) * * * The contracting officer shall initiate a withdrawal of an individual small business set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) stating the reasons. * * *

(b) If the agency small business specialist does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (or, if a procurement center representative is not assigned, see 19.402(a)) for review.

* * * * *

■ 11. Revise section 19.705–3 to read as follows:

19.705–3 Preparing the solicitation.

The contracting officer shall provide the Small Business Administration's (SBA's) procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) a reasonable period of time to review any solicitation requiring submission of a subcontracting plan and to submit advisory findings before the solicitation is issued.

■ 12. Amend section 19.705–4 by revising paragraph (d)(7) to read as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(d) * * *

(7) Obtain advice and recommendations from the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) and the agency small business specialist.

■ 13. Amend section 19.705–5 by revising the first sentence in paragraph (a)(3) to read as follows:

19.705–5 Awards involving subcontracting plans.

(a) * * *

(3) Notify the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) of the opportunity to review the proposed contract (including the plan and supporting documentation). * * *

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■ 14. Amend section 19.705–6 by revising the introductory text of paragraph (c) and paragraph (d) to read as follows:

19.705–6 Postaward responsibilities of the contracting officer.

* * * * *

(c) Giving to the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) a copy of—

* * * * *

(d) Notifying the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) of the opportunity to review subcontracting plans in connection with contract modifications.

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■ 15. Amend section 19.1305 by revising the second sentence of paragraph (e) to read as follows:

19.1305 HUBZone set-aside procedures.

* * * * *

(e) * * * When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) to set aside an acquisition for competition restricted to HUBZone small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. * * *

■ 16. Amend section 19.1405 by revising the second sentence of paragraph (d) to read as follows:

19.1405 Service-disabled veteran-owned small business set-aside procedures.

* * * * *

(d) * * * When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) to set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2005-10; FAR Case 2004-035; Item III; Docket 2006-0020, Sequence 8]

RIN 9000-AK04

Federal Acquisition Regulation; FAR Case 2004-035, Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) regarding prohibition on obtaining cost or pricing data to implement Section 818 of Public Law 108-375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

DATES: *Effective Date:* July 28, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Jeremy Olson, at (202) 501-3221. Please cite FAC 2005-10, FAR case 2004-035. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 818 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 amends 10 U.S.C. 2306a. 10 U.S.C. 2306a provides exceptions to the requirement for submission of cost or pricing data, including an exception for commercial items. Section 818 states that the exception for a commercial item does not apply to noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than \$500,000 or 5 percent of the total price of the contract, whichever is greater. Section 818 applies to offers submitted, and to modifications of contracts or subcontracts made, on or after June 1, 2005.

An interim rule was published in the **Federal Register** on June 8, 2005 (70 FR 33659) to implement the statute.

In response to the interim rule, comments were received from seven respondents. One commenter opposes the rule in its entirety, while the other commenters recommend various revisions to the final rule regarding thresholds, definition of total cost, definition of noncommercial modifications, and waivers.

Public Comments

1. *Rule fails to recognize the time-honored recognition prohibiting obtainment of cost or pricing data for commercial or modified commercial items.*

Comment: One commenter asserts that this revision invalidates long standing procurement streamlining policies previously promoted by the acquisition community. This commenter states that "The exemption allowance from submission of cost or pricing data afforded to providers of commercial items should not be abolished on the basis of an arbitrary dollar threshold." This commenter further states that the interim rule will pose an unnecessary burden to a large segment of the contracting community, and that concerns may also surface with respect to the safeguard from inadvertent disclosure of the required cost or pricing data. This commenter urges the abolishment of the rule.

Councils' Response: The interim rule implements a statutory requirement to obtain cost or pricing data for noncommercial modifications when the statutory thresholds are met. The Councils do not have the authority to decline implementation of the statute. As to the concern regarding safeguarding data, the Government has a long-standing set of procedures that has effectively protected contractor proprietary cost and pricing data from unauthorized disclosure. These same procedures will apply when cost or pricing data are obtained under the subject rule.

2. *Dollar and percentage thresholds.*

a. *Comment:* Two commenters assert that the interim rule should be revised to clearly state that the requirements for submitting certified cost or pricing data apply only if both the TINA threshold and the NDAA thresholds have been met. These commenters state that Section 818 created an exception to the commercial item exception, but did not change the threshold for TINA. Thus, noncommercial modifications are subject to TINA if over the NDAA thresholds, but only if the noncommercial modifications also exceed the TINA thresholds.

Councils' Response: The Councils agree with the commenters and have revised the interim rule accordingly.