

Center, Fort Worth, Texas (Up to 50% of the Government's requirement) should read Temporary Administrative/General Support Services for Texas, Oklahoma, Louisiana, Arkansas and New Mexico (Up to 50% of the Government's requirement).

Beverly L. Milkman,

Executive Director.

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DEPARTMENT OF COMMERCE

[Docket No. 960828234-6234-01]

RIN 0690-AA25

Guidelines for Empowerment Contracting

AGENCY: Department of Commerce.

ACTION: Proposed guidelines; request for comment.

SUMMARY: The Department of Commerce is issuing these proposed guidelines requesting public comment on policies and procedures intended to promote economy and efficiency in Federal procurement by granting qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress. This action is taken in accordance with the President's Executive Order entitled, "Empowerment Contracting." The standards set forth in these proposed guidelines will serve as the basis for a proposed revision to the Federal Acquisition Regulation ("FAR"). Information obtained from public comment on these guidelines will be used to help draft the proposed FAR revision.

DATES: Comments must be submitted on or before October 15, 1996.

ADDRESSES: Comments may be mailed to the Department of Commerce, Office of the Assistant General Counsel for Finance and Litigation, Room 5896, 14th and Constitution Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joe Levine, 202-482-1071.

SUPPLEMENTARY INFORMATION: On May 21, 1996, President Clinton issued Executive Order 13005, "Empowerment Contracting" (the "Order"). The purpose of the Order is to strengthen the economy and secure broad-based competition for Federal contracts by fostering growth of Federal contractors in economically distressed communities. In the Order, the President charged the Secretary of Commerce (the "Secretary"), in

consultation with the Secretaries of Housing and Urban Development, Labor and Defense; and the Administrators of the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, and the Office of Federal Procurement Policy, to develop policies and procedures to ensure that Federal agencies, when awarding contracts in unrestricted competitions, grant qualified large and small businesses appropriate price or evaluation incentives to encourage business activity in areas of general economic distress.

Specifically, the Order requires the Secretary to "develop policies and procedures to ensure that agencies, to the extent permitted by law, grant qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress, including a price or a non-price evaluation credit, when assessing offers for government contracts in unrestricted competitions, where the incentives would promote the policy set forth in this Order." The Order also calls upon the Secretary to (1) monitor the implementation and operation of the procedures developed; (2) ensure proper administration of the program and reduce the potential for fraud by intended beneficiaries; (3) develop a process to evaluate the effectiveness of the procedures developed; and (4) issue an annual report to the President on the status and effectiveness of the program. In addition, the Secretary must ensure that all policies, procedures and regulations developed pursuant to the Order minimize the administrative burden on affected agencies and the procurement process.

These proposed guidelines, which are being published for 30 days' public comment, respond to the requirement in section 4(b) of the Order that the Secretary of Commerce draft rules, regulations, and guidelines necessary to implement the Order within 90 days of the date of the Order. The standards set forth in these proposed guidelines will not, in and of themselves, have force and effect in Federal procurements. Rather, they will serve as the basis for a proposed revision to the Federal Acquisition Regulation ("FAR") pursuant to the policies and procedures set forth in FAR Subpart 1.5., 48 CFR Subpart 1.5. That proposed revision will be published for public comment, pursuant to 48 CFR 1.501-2.

It has been determined that these proposed guidelines are significant for purposes of Executive Order 12866. Because these proposed guidelines

relate to a matter of public property, loans, grants, benefits, or contracts, they are exempted from all the procedural requirements of the Administrative Procedure Act (5 U.S.C. 553). Because notice and comment are not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and was not done for purposes of the Regulatory Flexibility Act. The guidelines do not contain information collection requirements for purposes of the Paperwork Reduction Act.

Guidelines for Empowerment Contracting

I. Definitions

"Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

"Area of general economic distress" means, for all urban and rural communities, any census tract that has a poverty rate of at least 20 percent or any designated Federal Empowerment Zone, Supplemental Empowerment Zone, Enhanced Enterprise Community, or Enterprise Community. "Area of general distress" also means any rural or Indian reservation area that currently meets the criteria for designation as a redevelopment area under § 401(a) of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161(a)), as set forth at 15 CFR 301.2 (loss of population); 15 CFR 301.4 (Indian Lands) and 15 CFR 301.7 (special impact areas).

The Department of Commerce shall develop and maintain the official listing of eligible areas, based on the 1990 decennial Census of Population data. The listing shall contain the Census tract and block numbering for all eligible areas.

"Qualified large business" means a large for-profit or not-for-profit trade or business that (1) employs a significant number of residents from the area of general economic distress; and (2) either has a significant physical presence in the area of general economic distress or has a direct impact on generating significant economic activity in the area of general economic distress.

"Qualified small business" means a small for-profit or not-for-profit trade or business that (1) employs a significant number of residents from the area of general economic distress; (2) has a significant physical presence in the area of general economic distress; or (3) has a direct impact on generating significant economic activity in the area of general economic distress.

"Eligible businesses":

(1) "Business" means the legal entity responsible for performance of the contract for which a preference is sought.

(2) "Small business" is defined by the definitions and procedures set forth by the Small Business Administration for determining size eligibility for government procurements (13 CFR 121.901-911).

(3) "Large business" means any business that is not a small business.

(4) "Not-for-profit businesses"—Notwithstanding 13 CFR 121.403 (the SBA regulations that defines "business or concern" to mean for-profit entities), size determinations for not-for-profit entities will follow the same procedures as those of for-profit entities, *i.e.*, the Standard Industrial Code (SIC) of the procurement will govern.

(5) "Employs a significant number of residents from the area." This means a business allocates or will (based on a showing made at the time of certification of eligibility for a preference) allocate at least 15 to 25 percent of its total labor costs associated with performing the contract in wages to residents from the area of general economic distress;

(6) "Has a significant physical presence in the area." This means a business with physical plant(s) in eligible areas which comprises at least 25 percent of the total area of the physical plant(s) of the business;

(7) "Has a direct impact on generating significant economic activity in the area." This means a business which: (1) allocates or will (based on a showing made at the time of certification of eligibility for a preference) allocate at least 40 to 50 percent of its total labor costs associated with performing the contract in wages to residents from the area of economic distress; or (2) during the six months prior to submitting its bid or proposal, has incurred at least 15 percent of its expenses on goods, materials, and services from firms located in eligible areas; or (3) is owned¹ by permanent resident(s) of the area of economic distress who lives full time in the area of economic distress.

II. Challenges

Businesses shall "certify" their qualifications pursuant to the definitions set forth in the "Definitions" section of these guidelines. The Commerce Department may develop a system for verifying key information, and criminal sanctions shall apply for

false applications. Challenges regarding certification as to size will continue to be handled under SBA's Procedures for Size Protests and Appeals (13 CFR 121.1601-121.1722). Challenges to certifications regarding other elements required for qualification shall be heard by the Commerce Department under procedures to be developed.

III. Applicability

Subject to the provisions contained in the "Phased Implementation of the Program" section of these proposed guidelines, these of the Program" section of these proposed guidelines, these proposed guidelines shall apply to unrestricted competitions for contracts exceeding \$100,000.

IV. Incentive Structure

Both price and non-price incentives shall be available in contracts subject to these proposed guidelines. While applying these incentives, the Contracting Officer will be authorized to determine the size and type of incentive to apply to any particular procurement. Preferences in the form of incentives shall represent a price preference of 5 to 10 percent or an evaluation credit 5 to 10 percent.² Any preference a business receives under these guidelines shall be added to the preferences it may receive pursuant to other statutory or regulatory programs.

V. Monitoring and Evaluation

Subject to the provisions of the "Phased Implementation of the Program" section of these proposed guidelines, the Commerce Department, in conjunction with procuring agencies, shall monitor the process as follows:

(1) *Monitoring the Federal Procurement Process.* We would expect that the benefit to the federal procurement system would begin to be realized during the latter years of phase two of the program. To assist in monitoring and evaluating the efficiency of this new program, agencies awarding contracts to qualified businesses shall provide the following information to the Department of Commerce:

(A) The startup costs and ongoing administrative costs of implementing the program;

(B) The extent to which incentives were used in evaluating awards under this program;

² If, for example, a price preference were used in an IFB or an RFP, a qualifying firm's offered price would be reduced by 5% to 10%. If an evaluation preference were used in an RFP, an offeror that received a preference would have its overall non-price related evaluation increased by 5% to 10% above the score it would have otherwise received.

(C) The extent to which incentives changed the outcome of the procurement;

(D) The advantages and disadvantages to the agency of awarding contracts with these preferences; and

(E) The savings and/or quality improvements in supplies or services bought under contracts subject to the program (or increased costs and/or decreased quality of such supplies or services).

(2) *Monitoring the Impact on Business Development.* Evaluation criteria shall be established on national goals and objectives. A sample of businesses receiving contracts under the program would be examined with the following issues being addressed:

(A) Did the business locate or remain in a particular place so that it would be eligible for preferences under these guidelines;

(B) Did the business hire new workers or provide additional benefits to existing workers from eligible areas so that it would be eligible for preferences under these guidelines;

(C) Did the business purchase additional goods and services from firms located in eligible areas so that it would be eligible for preferences under these guidelines;

(D) Did the business propose to hire more workers in eligible areas as a result of bidding or proposing under the subject contract;

(E) Is this contract new work that the business would not have received but for this program.

(3) *Monitoring the Impact on Distressed Communities.* In order to examine impacts of the program on distressed communities, outcomes should be measured in the context of local conditions and community priorities, as well as broad national goals. The local vision for a community's transformation should provide the principal criteria for measuring local outcomes. The monitoring and evaluation process should have both an initial and a longer term phase. The principal objectives of the initial phase would be to:

(A) Establish baseline measurements of demographics, economic indicators, physical infrastructure conditions and needs, and social conditions;

(B) Identify local outcome measures and common national measures toward which long-term evaluation will be directed, including employment, crime, education, and poverty; and

(C) Develop a strategy and mechanism for evaluating progress toward local and national goals over time.

The longer-term evaluation should have the capacity to answer

¹ For these purposes, an individual "owns" a business if he or she has a 50 percent or greater financial interest in such business.

fundamental questions about the efficacy of targeted Federal contracting, specifically its ability to revitalize distressed communities and to improve the social and economic well-being of residents. This phase will examine such questions as:

(A) To what extent does the program create or improve the quality of jobs and economic opportunities in the distressed area?

(B) To what extent does the program result in new businesses locating in the community or increased rates of business retention in the community?

(C) To what extent does the program affect areas outside the distressed community by either connecting residents with opportunities in the larger community or by increasing growth in the larger area?

(D) How have the changes in these communities affected the jurisdictions in which they are located?

(E) How have areas (and residents) adjacent to the distressed communities been affected?

(F) At what cost have these outcomes been achieved? The evaluation must ultimately provide an empirical basis for assessing program costs relative to benefits.

(G) How effectively does the program interact with other government programs designed to promote the development of economically distressed communities?

In monitoring the program, the Department of Commerce can request additional information to the extent that it deems appropriate.

VI. Phased Implementation of the Program

(1) *First phase—six month testing period.* These guidelines will apply initially, during a first phase of six months' duration, only to a limited number of contracts involving industries whose two digit Standard Industrial Classification (or "SIC") Codes will be listed in the revision to the FAR based upon these guidelines (see SUPPLEMENTARY INFORMATION). The contracts to be selected shall be developed with the concurrence of the Department of Commerce and the procuring agency in question. We seek public comment on the industries to be listed. During the first phase, the efficacy of alternative forms of preferences in different industry settings will be tested and assessed.

(2) *Second phase—further implementation.* Further implementation of the Order will be instituted in the second phase of the program, which will begin after the first

phase of the program has ended. In the second phase, the program will be applied to a larger number of contracts within selected two digit SIC Code industries involved in competitive Federal procurements, consistent with efficient administration of the program. Industries included in the second phase will be identified in advance of being included. The contracts to be selected shall be developed with the concurrence of the Department of Commerce and the procuring agency in question. The efficacy of the program will be monitored and evaluated during the second phase, subject to the criteria set forth in the "Monitoring and Evaluation" section of these guidelines. At the end of this five or so year period, we would ascertain whether the program is meeting its goals. Specifically, we would determine whether the program (a) stimulated economic activity (through, among other things, job creation or new investment) in areas of general economic distress and (b) benefited the federal procurement system. If the program meets these objectives, it would be expanded to other selected industries for similar implementation and evaluation.

VII. Effective Date

The standards set forth in these guidelines will serve as the basis for a proposed revision to the Federal Acquisition Regulation pursuant to the policies and procedures set forth in FAR Subpart 1.5. The proposed FAR revision will be published for public comment, pursuant to 48 CFR 1.501-2.

Dated: September 10, 1996.
Michael Kantor,
Secretary of Commerce.
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International Trade Administration [A-421-803]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 12, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative review of

the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands. The review covers one exporter of the subject merchandise to the United States, Hoogovens Groep BV (Hoogovens) and the period August 18, 1993, through July 31, 1994. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone: (202) 482-0405 or (202) 482-3833, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 12, 1995, the Department published in the Federal Register (60 FR 35893) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172, August 19, 1993). On February 6, 1996, and on August 7, 1996, the Department sent Hoogovens supplemental questionnaires on the subject of reimbursement of antidumping duties. We gave interested parties an opportunity to comment on our preliminary results and the supplemental questionnaires. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

Scope of This Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice