[FR Doc. 95–22780 Filed 9–15–95; 8:45 am]
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48 CFR Part 5

[FAC 90–32; FAR Case 95–606; Item VI]

RIN 9000–AG60

Federal Acquisition Regulation; Publicizing Contract Actions

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 a final rule to revise FAR section 5.207(b)(4), Preparation and transmittal of synopses. The revision deletes the requirement for the Federal Information Processing Standard (FIPS) Number in Commerce Business Daily synopses and, in lieu thereof, requests Government Printing Office (GPO) Billing Account Code information.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano at (202) 501–1758 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 90–32, FAR case 95–606, Publicizing Contract Actions.

SUPPLEMENTARY INFORMATION:

A. Background

For approximately 45 years, the Commerce Business Daily (CBD) has provided free printing services to the agencies. During this period, printing expenses were paid with appropriated funds. Beginning October 1, 1995, the CBD will no longer receive appropriated funds for this purpose, and the Department of Commerce will be required to charge agencies a fee for printing services. The cost will be a flat rate of $18 per notice and bills will be sent to the agency that issues the notice. The Government Printing Office (GPO) has agreed to provide billing and collection services and, in order to facilitate this, agencies will need to include their GPO account number in all CBD notices. The proposed changes to the FAR will enable GPO to properly bill and collect from the individual agency that has placed a CBD notice.

B. Regulatory Flexibility Act

The 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 comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite FAR case 95–606 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this final rule imposes no new reporting requirements or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5

Government procurement.

Dated: September 7, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Part 5 is amended as set forth below:

1. The authority citation for 48 CFR Part 5 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 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.207 is amended by revising paragraph (b)(4), Item 4, and paragraph (b)(6), Item 4, to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(b)(4) * * *

* * * * *

4. GOVERNMENT PRINTING OFFICE (GPO) BILLING ACCOUNT CODE.

(The originating office's account number used by the GPO for billing and collection purposes. The field length is nine alpha-numeric characters. The first three characters entered are ''GPO'' and then the following six characters are the numeric account number. Agencies should contact the GPO's Office of Comptroller for additional information. Enter N/A if an account number has not been assigned.)

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(b)(6) * * *

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4. GPO123456!!

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[FR Doc. 95–22781 Filed 9–15–95; 8:45 am]
BILLING CODE 6820–EP–P

48 CFR Parts 28, 32, and 52

[FAC 90–32; FAR Case 94–762; Item VII]

RIN 9000–AG35

Federal Acquisition Regulation; Subcontractor Payments

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

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to implement Sections 2091 and 8105 of the Act which address subcontractor payments, requests for information, and bonds. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Galbraith, Finance/Payment Team Leader, at (703) 697–6710, 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 90–32, FAR case 94–762.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

This notice announces revisions developed under FAR case 94–762. The following sections of the Federal Acquisition Streamlining Act are implemented by this final rule:

Section 2091 of the Act changed section 806, subsection (c), of the Fiscal Years 1992 and 1993 Defense Authorization Act by striking the existing subsection (c) and inserting a

new subsection (c). The stricken words had permitted the FAR Council to substitute FAR coverage for coverage otherwise required from the Secretary of Defense. The substituted words require the FAR Council to place in the FAR, for Government-wide applicability, the coverage required of the Secretary of Defense.

Additionally, Section 8105 of the Act changed section 806 of the Fiscal Years 1992 and 1993 Defense Authorization Act by striking the existing subsection (b) and inserting a new subsection (b). The stricken words dealt with deadlines for the implementation in regulations of the statutory requirements, and that coverage is no longer pertinent. The substituted language creates an exemption from the requirements of the statute for the acquisition of commercial items. Therefore, the clause prescription at FAR 28.106–4(b) has been revised to reflect this exemption.

The final rule is, except for minor adjustments, the same language which was previously in the Defense Federal Acquisition Regulation Supplement, at 228.106–4–70, 228.106–6, 232.970, and 252.228–7006 and proposed in the Federal Register on February 2, 1995.

It should be noted that Section 4104(b) of the Act concerning subcontractor payments under smaller construction contracts is being addressed in a separate case. This case, 94–762, addresses only the changes required by Sections 2091 and 8105. It should also be noted that the duplication of responsibilities for furnishing copies of bonds in 28.106–6(d)(3) and the clause in 52.228–12 is intentional. The statute assigns this responsibility to both the Government and contractor. Finally, the language in 32.112–1(c) concerning ''administrative and other remedial action'' deliberately does not go into detail as to what these actions are. The specifics of these areas and especially the regulations and procedures are peculiar to each agency. The wording is derived from the underlying statute.

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 it merely requires the contracting officer or the contractor to furnish bonding information to subcontractors upon request, and provides for remedies which only apply to contractors who fail to make payment to subcontractors.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Subcontractor Payments was submitted to the Office of Management and Budget and approved through March 31, 1998, OMB Control No. 9000–0135. Public comments concerning this request were invited through a Federal Register notice at 60 FR 6526, February 2, 1995.

D. Public Comments

A proposed rule was published in the Federal Register at 60 FR 6602, February 2, 1995. During the public comment period, six comments were received. For the most part, these comments raised editorial and cross-reference points, which have been corrected. One commentor expressed concern about the use of the term ''non-commercial'', and suggested, as an alternative, the term ''other-than-commercial.'' While the suggested term may be logically more accurate, the term ''non-commercial'' has been used throughout all the new Part 32 coverage, and appears to be correctly understood. It was concluded that this change in terminology would not significantly improve the coverage, so the suggestion was not adopted.

List of Subjects in 48 CFR Parts 28, 32, and 52

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 28, 32, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 28, 32, 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

2. Section 28.106–4 is amended by designating the existing text as paragraph (a) and adding (b) to read as follows:

28.106–4 Contract clause.

* * * * *

(b) In accordance with Section 806(a)(3) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, the contracting officer shall insert the clause at 52.228–12, Prospective Subcontractor Requests for Bonds, in solicitations and contracts with respect to which a payment bond will be furnished pursuant to the Miller Act (see 28.102–1), except for contracts for the acquisition of commercial items as defined in Subpart 2.1.

3. Section 28.106–6 is amended by adding paragraph (d) to read as follows:

28.106–6 Furnishing information.

* * * * *

(d) Section 806(a)(2) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, requires that the Federal Government provide information to subcontractors on payment bonds under contracts for other than commercial items as defined in Subpart 2.1. Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract with respect to which a payment bond has been furnished pursuant to the Miller Act, the contracting officer shall promptly provide to the requester, either orally or in writing, as appropriate, any of the following:

(1) Name and address of the surety or sureties on the payment bond.

(2) Penal amount of the payment bond.

(3) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond.

PART 32—CONTRACT FINANCING

4. Sections 32.112, 32.112–1 and 32.112–2 are added to read as follows:

32.112 Payment of subcontractors under contracts for non-commercial items.

32.112–1 Subcontractor assertions of nonpayment.

(a) In accordance with Section 806(a)(4) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, upon the assertion by a subcontractor or supplier of a Federal contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with Chapter 39 of Title 31, United States Code (Prompt Payment Act); or

(ii) Final payment to the subcontractor or supplier in compliance

with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor; or

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraphs (a)(1) and (2) of this section, the contracting officer finds the prime contractor is not in compliance, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.

(c) If the contracting officer determines that a certification referred to in paragraph (a)(3) of this section is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

32.112–2 Subcontractor requests for information.

(a) In accordance with Section 806(a)(1) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, upon the request of a subcontractor or supplier under a Federal contract for a non-commercial item, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the prime contractor has submitted requests for progress payments or other payments to the Federal Government under the contract; and

(2) Whether final payment under the contract has been made by the Federal Government to the prime contractor.

(b) In accordance with 5 U.S.C. 552(b)(1), this subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept classified in the interest of national defense or foreign policy; and

(2) Properly classified pursuant to such Executive order.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.228–12 is added to read as follows:

52.228–12 Prospective Subcontractor Requests for Bonds.

As prescribed in 28.106–4(b), use the following clause:

Prospective Subcontractor Requests For Bonds (Oct 1995)

In accordance with Section 806(a)(3) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of clause)

[FR Doc. 95–22782 Filed 9–15–95; 8:45 am]

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48 CFR Parts 32, 33, and 52

[FAC 90–32; FAR Case 94–731; Item VIII]

RIN 9000–AG52

Federal Acquisition Regulation; Reimbursement of Protest Costs

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

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council is promulgating this final rule to allow the Government to seek reimbursement for protest costs it has paid a protester where the protest has been sustained based upon the awardee's misrepresentation. In addition to any other remedies available, the Government may collect this debt by offsetting the amount against any payment due the awardee under any Government contract the awardee might have. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Hodge, Protests/Disputes Team Leader at (703) 274–8940 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 90–32, FAR case 94–731, Reimbursement of Protest Costs.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements.

This case presents FAR amendments developed under FAR Case 94–731, Reimbursement of Protest Costs. Sections 1016, 1403, and 1435 of the Act provide that agencies may be required to pay protest and offer preparation costs to protesters under certain circumstances. Often as the result of discovery during a protest, misrepresentations may be detected that could not have been reasonably known to the agency's evaluators. A protest may be sustained where the award has been induced by a material misrepresentation by the awardee. Such situations often involve proposed ''key personnel.''

The agency is without effective remedy in such cases. Theoretically, the agency could ask the Department of Justice to file a lawsuit against the offeror making the misrepresentations. However, due to the heavy workload of the Justice attorneys, this is not a practical alternative. This FAR change will not adversely affect any substantive right of an offeror. Under the language, the Government remedy is to offset such costs on the same or an unrelated contract. If the offeror believes that the offset is not justified, it may appeal the action to the agency, or under the Contract Disputes Act to either a Board of Contract Appeals or the Court of Federal Claims.

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 vast majority of contracts do not involve protests where misrepresentation is detected through discovery.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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.*