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48 CFR Parts 1, 5, 8, et al.

Federal Acquisition Regulation; Definitions for "Contract Action" and "Contracting Action"; Proposed Rule

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 8, 17, 19, 32, and 52

[FAR Case 2000–402]

RIN 9000–AI76

Federal Acquisition Regulation; Definitions for ''Contract Action'' and ''Contracting Action''

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

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide for consistent use of the term ''contract action.'' The proposed revisions are intended to reorganize, simplify, and clarify the FAR. The Councils do not intend to make any substantive change to the FAR by this proposal. Comments should address any potential unintended substantive changes to the FAR resulting from the proposed revisions. This case is one of a series of cases that implement the White House memorandum, Plain Language in Government Writing, dated June 1, 1999.

DATES: Interested parties should submit comments on or before July 31, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to General Services Administration, FAR Secretariat (MVR), Attn: Ms. Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000–402@gsa.gov.

Please submit comments only and cite FAR case 2000–402 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405; (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2000–402.

SUPPLEMENTARY INFORMATION:

A. Background

The rule amends the Federal Acquisition Regulation (FAR) to address perceived inconsistencies in the use of the terms ''contract action'' and ''contracting action.'' The rule changes the term ''contracting action'' to ''contract action'' throughout the FAR. In the current FAR, the terms are used interchangeably, with ''contract action'' used most often. Also, the rule deletes the existing definitions of ''contracting action'' in FAR part 5 (defined but not used in part 5) and ''contract action'' in part 32 and moves the content to the policy section of each part, because the definitions really serve to narrow the scope of each part.

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 Councils do not expect this proposed rule 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.*, because, while we are making changes in accordance with plain language guidelines, we are not substantively changing procedures for award and administration of contracts. Therefore, an Initial Regulatory Flexibility Analysis is not required. We invite comments from small businesses and other interested parties. We will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Small entities must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–402), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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 1, 5, 8, 17, 19, 32, and 52

Government procurement.

Dated: May 24, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose to amend 48 CFR parts 1, 5, 8, 17, 19, 32, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 5, 8, 17, 19, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Revise section 1.403 to read as follows:

1.403 Individual deviations.

Individual deviations affect only one contract action, and, unless section 1.405(e) is applicable, may be authorized by the agency head. The contracting officer must document the justification and agency approval in the contract file.

3. Revise the introductory paragraph of section 1.404 to read as follows:

1.404 Class deviations.

Class deviations affect more than one contract action. When an agency knows that it will require a class deviation on a permanent basis, it should propose a FAR revision. Civilian agencies, other than NASA, must furnish a copy of each approved class deviation to the FAR Secretariat.

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4. Revise paragraph (b) of section 1.705 to read as follows:

1.705 Supersession and modification.

* * * * *

(b) The contracting officer need not cancel the solicitation if the D&F, as modified, supports the contract action.

PART 5—PUBLICIZING CONTRACT ACTIONS

5. Revise section 5.000 to read as follows:

5.000 Scope of part.

This part prescribes policies and procedures for publicizing contract opportunities and award information. The policies apply to actions resulting in a contract, including actions for additional supplies or services outside the existing contract scope. The policies do not apply to actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

5.001 [Removed and Reserved]

6. Remove and reserve section 5.001.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

7. Revise section 8.102 to read as follows:

8.102 Policy.

When practicable, agencies must use excess personal property as the first

source of supply for agency and cost-reimbursement contractor requirements. Agency personnel must make positive efforts to satisfy agency requirements by obtaining and using excess personal property (including that suitable for adaptation or substitution) before initiating a contract action.

PART 17—SPECIAL CONTRACTING METHODS

17.104 [Amended]

8. Amend the second sentence of paragraph (b) of section 17.104 by removing ''contracting action'' and inserting ''contract''.

9. Revise the introductory text of paragraph (b) of section 17.503 to read as follows:

* * * * *

17.503 Determinations and findings requirements.

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(b) If the Economy Act order requires contract action by the servicing agency, the D & F must also include a statement that at least one of the following circumstances applies—

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

10. In section 19.302, revise the first sentence of paragraph (h)(4) to read as follows:

19.302 Protesting a small business representation.

* * * * *

(h) * * *

(4) If a protest is received that challenges the small business status of an offeror not being considered for award, the contracting officer is not required to suspend contract action.

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11. Revise paragraph (c)(2) of 19.505 (and remove the undesignated paragraph following paragraph (c)(2)) to read as follows:

19.505 Rejecting Small Business Administration recommendations.

* * * * *

(c) * * *

(2) The SBA must be allowed 15 working days after making such a written request, within which the Administrator of SBA—

(i) May appeal to the Secretary of the Department concerned; and

(ii) Must notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, the contracting officer must assume that the SBA request to suspend the contract action has been withdrawn and that an appeal to the Secretary was not taken.

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PART 32—CONTRACT FINANCING

12. Revise the introductory text of section 32.000 to read as follows:

32.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters related to actions resulting in a contract, including actions for additional supplies or services outside the existing contract scope. This part does not apply to actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This part addresses—

* * * * *

32.001 [Amended]

13. Amend section 32.001 by removing the definition of ''Contract action''.

14. Amend section 32.703–2 by revising the first sentence to read as follows:

32.703–2 Contracts conditioned upon availability of funds.

(a) *Fiscal year contracts.* The contracting officer may initiate a contract action properly chargeable to funds of the new fiscal year before these funds are available, provided, that the contract includes the clause at 52.232–18, Availability of Funds (see 32.705–1(a)).

* * * * *

15. Revise paragraph (a) of 32.705–1 to read as follows:

32.705–1 Clauses for contracting in advance of funds.

(a) Insert the clause at 52.232–18, Availability of Funds, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contract action will be initiated before the funds are available.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Revise the introductory text of 52.232–18 to read as follows:

52.232–18 Availability of funds.

As prescribed in 32.705–1(a), insert the following clause:

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