

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to inform offerors under construction solicitations that the Government may reject bids as nonresponsive if the prices are materially unbalanced. The proposed rule was published in the Federal Register at 56 FR 29539, June 27, 1991. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 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 90-39, FAR case 91-31.

SUPPLEMENTARY INFORMATION:**A. Background**

The FAR was previously amended to include unbalanced bidding provisions at 52.214-10, Contract Award—Sealed Bidding, and 52.215-16, Contract Award, for supplies and services procured under sealed bidding and negotiation procedures. At that time, the unbalanced bidding provisions were not made applicable to construction solicitations. However, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have decided that, for consistency, construction solicitations should include a similar provision to notify offerors that their bids may be rejected as nonresponsive if the prices are materially unbalanced.

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 unbalanced bidding provisions have already been incorporated in solicitations, for other than construction, with no known impact on the small business community. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 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).

2. Section 52.214-19 is amended by revising the date of the provision to read "(AUG 1996)"; and by adding paragraph (d) to the provision to read as follows:

52.214-19 Contract Award—Sealed Bidding—Construction.

* * * * *

CONTRACT AWARD—SEALED BIDDING—CONSTRUCTION (AUG 1996)

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(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subtitle items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

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48 CFR Part 52

[FAC 90-39; FAR Case 93-305; Item XXXI]

RIN 9000-AF54

Federal Acquisition Regulation; Small Business Innovation Research Rights in Data

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

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council have agreed to convert the interim rule published at 59 FR 11386, March 10, 1994, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to implement Section 15(f) of the revised SBIR Program Policy Directive published by the Small Business Administration in the Federal Register on January 26, 1993 (58 FR 6144). The revision to the clause, Rights in Data—SBIR Program, increases the small business concern's data rights retention period from 2 to 4 years. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 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 90-39, FAR case 93-305.

SUPPLEMENTARY INFORMATION:**A. Background**

This rule implements Section 15(f) of the revised SBIR Program Policy Directive published by the SBA in the Federal Register on January 26, 1993 (58 FR 6144). Section 15(f) implements Section 103(f)(4) of Public Law 102-564, "Small Business Research and Development Enhancement Act of 1992," which increases the small business concern's data rights retention period from 2 to 4 years.

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 rule merely amends the FAR to conform to the requirements of the Small Business Innovation Research Program Policy Directive published by the Small Business Administration. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.*

List of Subjects in 48 CFR Part 52

Government procurement.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 52, which was published at 59 FR 11386, March 10, 1994 (FAC 90-20, Item XIX), is adopted as a final rule without change.

The authority citation for 48 CFR Part 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).

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96-14546 Filed 6-19-96; 8:45 am]

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48 CFR Part 52

[FAC 90-39; FAR Case 92-001; Item XXXII]

RIN 9000-AG94

Federal Acquisition Regulation; Inspection Clauses—Fixed Price

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 on a final rule to clarify certain Federal Acquisition Regulation (FAR) Inspection clauses pertaining to quality assurance by replacing the words “without additional charge” with the words “at no increase in contract price.” This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-39, FAR case 92-001.

SUPPLEMENTARY INFORMATION:

A. Background

An amendment to FAR 52.246-4 published in Federal Acquisition

Circular 90-09 as FAR case 90-58 (see 56 FR 67135, December 27, 1991), included the addition of the phrase “without additional charge” in paragraph (d). A comment was received questioning the phrase “without additional charge.” As a result, this final rule replaces the phrase “without additional charge” with the phrase “at no increase in contract price” in certain FAR Inspection clauses for clarity.

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 comments 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. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-39, FAR case 92-001), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these final 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 OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 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).

§ 52.246-2, 52.246-4, 52.246-7, 52.246-12, and 52.246-13 [Amended]

2. The clause dates in sections 52.246-2, 52.246-4, 52.246-7, 52.246-12, and 52.246-13 are revised to read “(AUG 1996)”; and sections 52.246-2(d), 52.246-4(d), 52.246-7(c), and 52.246-12(e) are amended by removing the words “without additional charge” and inserting “at no increase in contract price” in their place; and section 52.246-13(a) is amended by removing the words promptly and without additional charge” and inserting

“promptly, and at no increase in contract price” in its place.

[FR Doc. 96-14547 Filed 6-19-96; 8:45 am]

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48 CFR Part 52

[FAC 90-39; FAR Case 91-102; Item XXXIII]

RIN 9000-AF55

Federal Acquisition Regulation; Termination for Convenience

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 on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify language in the “Termination for Convenience of the Government (Fixed-Price)” clause. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 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 90-39, FAR case 91-102.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the Federal Register at 58 FR 64826, December 9, 1993. The proposed rule amended the clause at FAR 52.249-2, Termination for Convenience of the Government (Fixed-Price), to clarify existing language. Changes were made to clarify that incremental payments may be involved in some instances, such as a partial termination action, and to clarify the two instances when the contractor forfeits its right of appeal. After evaluation of public comments, the Councils agreed to two changes in the proposal. The first change revises paragraph (e) of the clause by replacing the word “amended” with the word “modified.” The second change revises paragraph (i) by deleting the phrase “following a claim and final decision.”

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and