

including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

Interested party means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

3. Section 26.102 is revised to read as follows:

26.102 Policy.

Indian organizations and Indian-owned economic enterprises shall have the maximum practicable opportunity to participate in performing contracts awarded by Federal agencies. In fulfilling this requirement, the Indian Incentive Program allows an incentive payment equal to 5 percent of the amount paid to a subcontractor in performing the contract, if the contract so authorizes and the subcontractor is an Indian organization or Indian-owned economic enterprise.

4. Section 26.103 is amended in the first sentence of paragraph (b) by revising "1849 "C" Street" to read "1849 C Street"; and revising the ZIP Code to read "20245"; in the second sentence of paragraph (c) by removing "15" and inserting "45"; and adding paragraph (f) to read as follows:

26.103 Procedures.

* * * * *

(f) Subject to the terms and conditions of the contract and the availability of funds, contracting officers shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. Contracting officers shall seek funding in accordance with agency procedures.

4. Section 26.104 is amended by revising the introductory text of paragraph (b) to read as follows:

26.104 Contract clause.

* * * * *

(b) Contracting officers in civilian agencies may insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts if—

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.226-1 is amended by revising the clause date and revising paragraph (a); in paragraph (b) by

revising the definition of "Indian organization" and adding, in alphabetical order, the definitions of "Indian", "Indian tribe" and "Interested party"; and by revising paragraphs (c) and (d) to read as follows:

52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

* * * * *

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (SEP 1996)

(a) For Department of Defense contracts, this clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. It does not apply to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219-9.

(b) * * *

Indian means any person who is a member of any Indian tribe, band, group, pueblo or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

* * * * *

Indian tribe means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

Interested party means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(c) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the self-certification of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the self-certification of a subcontractor, the Contracting Officer shall refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS-

334A-SIB, Washington, DC 20245. The BIA will determine the eligibility and notify the Contracting Officer. The 5 percent incentive payment will not be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the equitable adjustment to the prime contract shall be 5 percent of the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(d) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. Contracting Officers shall seek funding in accordance with agency procedures. The Contracting Officer's decision is final and not subject to the Disputes clause of this contract.

(End of clause)

[FR Doc. 96-18506 Filed 7-25-96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 27

[FAC 90-40; FAR Case 95-308; Item X]

RIN 9000-AH09

Federal Acquisition Regulation; General Agreement on Tariffs and Trade Patent Authorization

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 amending the Federal Acquisition Regulation (FAR) to provide internal Government guidance

for situations involving use of a patent without authorization from the patent holder. 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: September 24, 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 90-40, FAR case 95-308.

SUPPLEMENTARY INFORMATION:

A. Background

The Uruguay Round of the Multilateral Trade Negotiations of the General Agreement on Tariffs and Trade (GATT) resulted in the "Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations; Agreement Establishing the World Trade Organization; Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods." Articles 30 and 31 thereof contain requirements related to use of a patent without authorization from the patent holder, including use by the Government. The rule advises contracting officers to consult with legal counsel in such situations.

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 90-40, FAR case 95-308), in correspondence.

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 27

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 27 is amended as set forth below:

PART 27—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for 48 CFR Part 27 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 27.209 is added to read as follows:

27.209 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

(a) Article 31 of Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, to GATT (Uruguay Round) addresses situations where the law of a member country allows for use of a patent without authorization from the patent holder, including use by the Government.

(b) The contracting officer should consult with legal counsel regarding questions under this section.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28, 52, and 53

[FAC 90-40; FAR Case 91-027; Item XI]

RIN 9000-AE47

Federal Acquisition Regulation; Performance and Payment Bonds

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 (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed to a final rule amending the Federal Acquisition Regulation (FAR) to further standardize policies governing bonding. Two new standard clauses are added for use when performance or payment bonds are required, and a new Standard Form 1418, Performance and Payment Bonds—Other Than Construction, is added. 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: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501-1759 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 90-40, FAR Case 91-027.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 28.101-1, 28.101-2, 28.101-3, 28.102-3, 28.103-2, 28.103-3, 28.103-4, 28.106-1, 28.106-2, 28.106-3, 52.228-1, and 53.228 are revised, and two new clauses are added, 52.228-15, Performance and Payment Bonds—Construction, and 52.228-16, Performance and Payment Bonds Other Than Construction, to further standardize policies governing bonding. A proposed rule was published in the Federal Register at 56 FR 31278, July 9, 1991.

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 updates, clarifies, and standardizes policy pertaining to performance and payment bonds.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of an extension of an information collection requirement concerning Office of Management and Budget (OMB) Control Number 9000-0119, Performance and Payment Bonds, was submitted to OMB under 44 U.S.C. 3501, *et seq.*, and approved through May 31, 1999. Public comments were invited through a subsequent Federal Register notice published at 61 FR 19664, April 12, 1996.

List of Subjects in 48 CFR Parts 28, 52, and 53

Government procurement.