

meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only applies to acquisition of items from Serbia or Afghanistan.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 25 and 52

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 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 25—FOREIGN ACQUISITION

2. Amend section 25.701 by revising paragraph (a) to read as follows:

25.701 Restrictions.

(a)(1) The Government generally does not acquire supplies or services that cannot be imported lawfully into the United States. Therefore, except as provided in paragraph (a)(2) of this section, even for overseas use, agencies and their contractors and subcontractors must not acquire any supplies or services originating from sources within, or that were located in or transported from or through

- (i) Cuba (31 CFR part 515);
- (ii) Iran (31 CFR part 560);
- (iii) Iraq (31 CFR part 575);
- (iv) Libya (31 CFR part 550);
- (v) North Korea (31 CFR part 500);
- (vi) Sudan (31 CFR part 538);
- (vii) Territory of Afghanistan

controlled by the Taliban (Executive Order 13129 of July 4, 1999, Blocking Property and Prohibiting Transactions With the Taliban); or

(viii) Serbia, excluding the territory of Kosovo (Executive Order 13121 of April 30, 1999, Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo).

(2)(i) Unless agency procedures require a higher level of approval, the

contracting officer may, in unusual circumstances, acquire for use outside the United States supplies and services restricted in paragraph (a)(1) of this section. Examples of unusual circumstances are an emergency or when the supplies or services are not otherwise available and a substitute is not acceptable.

(ii) The contracting officer must provide documentation in the contract file whenever this exception is used.

* * * * *

3. Revise section 25.702 to read as follows:

25.702 Source of further information.

Refer questions concerning the restrictions in 25.701 to the Department of the Treasury, Office of Foreign Assets Control, Washington, D.C. 20220 (Telephone (202) 622-2520).

4. Amend section 25.1103 by revising paragraph (a) to read as follows:

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at 52.225-13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding \$2,500, unless an exception applies (see 25.701(a)(2)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212-5 by—

a. Revising the date of the clause and paragraph (a);

b. In the first sentence of the introductory text of paragraphs (b), (c), and (d), by removing “agrees to” and adding “shall” in their place; and

c. Removing paragraph (b)(21) and redesignating paragraphs (b)(19) and (b)(20) as (b)(20) and (b)(21), respectively; and adding a new paragraph (b)(19) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (July 2000)

(a) The Contractor shall comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

- (1) 52.222-3, Convict Labor (E.O. 11755).
- (2) 52.233-3, Protest after Award (31 U.S.C. 3553).

(b) * * *

; (19) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

* * * * *

6. Amend section 52.213-4 by revising the date of the clause and paragraph (a)(1)(ii) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (July 2000)

(a) * * *

(1) * * *

* * * * *

(ii) 52.225-13, Restrictions on Certain Foreign Purchases (July 2000) (E.O.'s 12722, 12724, 13059, 13067, 13121, and 13129).

* * * * *

7. Amend section 52.225-13 by revising the date of the clause and the last sentence of paragraph (a) to read as follows:

52.225-13 Restrictions on Certain Foreign Purchases.

* * * * *

Restrictions on Certain Foreign Purchases (July 2000)

(a) * * * Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

* * * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 97-18; FAR Case 2000-301; Item VIII]

RIN 9000-AI79

Federal Acquisition Regulation; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 802 of the National Defense

Authorization Act for Fiscal Year 2000 and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises CAS applicability requirements, dollar thresholds, and waiver requirements.

DATES: Effective Date: June 6, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after June 6, 2000.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before August 7, 2000 to be considered in the formulation of a final rule.

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

Submit electronic comments via the Internet to: farcase.2000-301@gsa.gov

Please submit comments only and cite FAC 97-18, FAR case 2000-301 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 Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-18, FAR case 2000-301.

SUPPLEMENTARY INFORMATION:

A. Background

Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65)—

- Revised, at 41 U.S.C. 422(f)(2)(B), the categories of contracts and subcontracts that are exempt from all CAS requirements;
- Required the Administrator for Federal Procurement Policy to revise the rules and procedures issued under 41 U.S.C. 422(f) to increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and
- Revised 41 U.S.C. 422(f) to permit the head of an executive agency to waive the applicability of CAS under certain conditions.

In response to Pub. L. 106-65, the CAS Board in the Office of Federal Procurement Policy published an interim rule in the **Federal Register** on February 7, 2000 (65 FR 5990). The CAS Board rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage, amended the regulations at 48 CFR part 9903 to implement Section 802.

This interim FAR rule—

- Amends the provision at FAR 52.230-1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million ("trigger contract") to be subject to "full CAS coverage," since the CAS Board removed this "trigger contract" amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201-3. The CAS Board added a new "trigger contract" dollar amount of \$7.5 million at paragraph (b)(7) of 48 CFR 9903.201-1, CAS applicability, which is already referenced at FAR 30.201-1;
- Revises FAR 30.201-4(b), Disclosure and consistency of cost accounting practices, and amends the provision at FAR 52.230-1 to reflect changes made by the CAS Board to increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and
- Revises the CAS waiver procedures and conditions at FAR 30.201-5, as required by Section 802 of Pub. L. 106-65.

This rule was not subject to Office of Management and Budget 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 interim rule is not expected 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 contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201-1(b)(3). Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-18, FAR case 2000-301), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. Section 802 became effective 180 days after the date of enactment of Public Law 106-65 (October 5, 1999). The CAS Board's interim rule that implements Section 802 became effective on April 2, 2000. It is necessary that the Councils publish an interim FAR rule to amend FAR Parts 30 and 52 to implement Section 802 and the CAS Board's interim rule. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

1. The authority citation for 48 CFR parts 30 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 30—COST ACCOUNTING STANDARDS ADMINISTRATION

2. Amend section 30.201-4 by revising paragraph (b)(1) to read as follows:

30.201-4 Contract clauses.

* * * * *

(b) *Disclosure and consistency of cost accounting practices.* (1) Insert the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over \$500,000, but less than \$50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201-2 (FAR

Appendix)), unless the clause prescribed in paragraph (c) of this subsection is used.

* * * * *

3. Revise section 30.201-5 to read as follows:

30.201-5 Waiver.

(a) The head of the agency—

(1) May waive the applicability of CAS for a particular contract or subcontract under the conditions listed in paragraph (b) of this subsection; and

(2) Must not delegate this waiver authority to any official in the agency below the senior contract policymaking level.

(b) The head of the agency may grant a waiver when one of the following conditions exists:

(1) The contract or subcontract value is less than \$15,000,000, and the head of the agency determines, in writing, that the segment of the contractor or subcontractor that will perform the contract or subcontract—

(i) Is primarily engaged in the sale of commercial items; and

(ii) Has no contracts or subcontracts that are subject to CAS.

(2) The head of the agency determines that exceptional circumstances exist whereby a waiver of CAS is necessary to meet the needs of the agency. Exceptional circumstances exist only when the benefits to be derived from waiving the CAS outweigh the risk associated with the waiver. The determination that exceptional circumstances exist must—

(i) Be set forth in writing; and

(ii) Include a statement of the specific circumstances that justify granting the waiver.

(c) When one of the conditions in paragraph (b) of this subsection exists, the request for waiver should include the following:

(1) The amount of the proposed award.

(2) A description of the contract or subcontract type (e.g., firm-fixed-price, cost-reimbursement).

(3) Whether the segment(s) that will perform the contract or subcontract has CAS-covered contracts or subcontracts.

(4) A description of the item(s) being procured.

(5) When the contractor or subcontractor will not accept the contract or subcontract if CAS applies, a statement to that effect.

(6) Whether cost or pricing data will be obtained, and if so, a discussion of how the data will be used in negotiating the contract or subcontract price.

(7) The benefits to the Government of waiving CAS.

(8) The potential risk to the Government of waiving CAS.

(9) The date by which the waiver is needed.

(10) Any other information that may be useful in evaluating the request.

(d) When neither of the conditions in paragraph (b) of this subsection exists, the waiver request must be prepared in accordance with 48 CFR 9903.201-5(e) (FAR Appendix) and submitted to the CAS Board.

(e) Each agency must report any waivers granted under paragraph (a) of this subsection to the CAS Board, on a fiscal year basis, not later than 90 days after the close of the Government's fiscal year.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.230-1 by—

a. Revising the date of the provision;

b. In the first sentence of paragraph (c)(3) by removing the phrase “more than \$25 million (of which at least one award exceeded \$1 million)” and adding “\$50 million or more” in its place;

c. In paragraph (c)(4)—

(i) In the “Caution” paragraph, by removing “\$25 million” and adding “\$50 million” in its place;

(ii) At “II. Cost Accounting Standards—Eligibility for Modified Contract Coverage,” in the second paragraph, by revising the first sentence; and

(iii) In the “Caution” paragraph following paragraph II by removing “\$25 million” each time it is used (twice) and adding “\$50 million” in their places. The revised text reads as follows:

52.230-1 Cost Accounting Standards Notices and Certification.

* * * * *

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUNE 2000)

* * * * *

(c) * * *

(4) * * *

II. Cost Accounting Standards—Eligibility for Modified Contract Coverage

* * * * *

□ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of

CAS-covered prime contracts and subcontracts.

* * * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 5, 47, and 49

[FAC 97-18; Item IX]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755.

List of Subjects in 48 CFR parts 3, 5, 47, and 49

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 3, 47, and 49 as set forth below:

1. The authority citation for 48 CFR parts 3, 47, and 49 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 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.303 [Amended]

2. Amend section 3.303 in the first sentence of paragraph (a) by removing “41 U.S.C. 253(B)(e) and 10 U.S.C. 2305(b)(5)” and adding “41 U.S.C. 253b(i) and 10 U.S.C. 2305(b)(9)” in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Revise the last sentence of section 5.204 to read as follows: