

Department of Defense

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1 and 52

[FAR Case 1999-610]

RIN 9000-AI66

Federal Acquisition Regulation; FAR Drafting Principles

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR). The proposed rule adds FAR drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users.

DATES: Interested parties should submit comments in writing on or before March 27, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1999-610@gsa.gov.

Please submit comments only and cite FAR case 1999-610 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (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 1999-610.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Parts 1 and 52 are amended to enhance a common understanding of how the Federal Acquisition Regulation is drafted. The proposed rule adds drafting principles in section 1.108 and amends FAR 1.105-2, 52.101, 52.104,

52.105, and 52.200 to reflect current FAR drafting conventions.

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 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 the rule only addresses drafting principles and does not impose any additional requirements on Government offerors or contractors. Therefore, we have not prepared an Initial Regulatory Flexibility Analysis. We invite comments from small businesses and other interested parties. 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.* (FAR case 1999-610), 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 and 52

Government procurement.

Dated: January 21, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 1 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 1 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. Amend section 1.105-2 by revising paragraphs (a) and (b)(2) to read as follows:

1.105-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) * * *

(2) Subdivisions below the section or subsection level consist of parenthetical alphanumeric using the following sequence: (a)(1)(i)(A)(1)(i).

3. Add section 1.108 to read as follows:

1.108 FAR conventions.

The following conventions provide guidance for interpreting this FAR regulation:

(a) *Words and terms.* Definitions in part 2 apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see 1.102-4(b)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes.* Unless otherwise specified—

(1) FAR changes apply to solicitations issued on or after the effective date of the published change; and

(2) Contracting officers may, at their discretion, include the changes in any existing solicitation, and, with appropriate consideration, any contract.

(e) *Statutory citations.* Statutory citations in this regulation include all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action unless another party is expressly cited.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.101 in paragraph (a) by revising the definition “Substantially as follows”; and by revising paragraph (d) to read as follows:

52.101 Using part 52.

(a) * * *

Substantially as follows or *substantially the same as*, when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition. Any variation must include the salient features of the FAR provision or clause, and must be consistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

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(d) *Introductory text.* Within subpart 52.2, the introductory text of each provision or clause includes a cross-reference to the location in the FAR subject text that prescribes its use.

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5. Amend section 52.104 by revising paragraph (a) to read as follows:

52.104 Procedures for modifying and completing provisions and clauses.

(a) The Contracting Officer must not modify provisions and clauses unless the FAR authorizes their modification. For example—

(1) “The Contracting Officer may use a period shorter than 60 days (but not less than 30 days) in paragraph (x) of the clause”; or

(2) “The contracting officer may substitute the words ‘task order’ for the word ‘Schedule’ wherever that word appears in the clause.”

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6. Amend section 52.105 by revising paragraph (a) to read as follows:

52.105 Procedures for using alternates.

(a) The FAR accommodates a major variation in a provision or clause by use of an alternate. The FAR prescribes alternates to a given provision or clause in the FAR subject text where the provision or clause is prescribed. The alternates to each provision or clause are titled “Alternate I,” “Alternate II,” “Alternate III,” etc.

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7. Revise section 52.200 to read as follows:

52.200 Scope of subpart.

This subpart sets forth the text of all FAR provisions and clauses (see 52.101(b)(1)), and gives a cross-reference to the location in the FAR that prescribes its use.

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