

be used for all individuals who are authorized access to protected areas without escort." It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area
* * *."

Currently, unescorted access into protected areas of the DCPD is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badges). The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at the entrance/exit location and are returned upon exit. The badges are stored and are retrievable at the entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plant's physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at the entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from certain requirements of 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

The Commission has completed its evaluation of the proposed action. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badges with them when they depart the site.

Based on a Sandia report entitled "A Performance Evaluation of Biometric Identification Devices" (SAND91-0276 UC-906 Unlimited Release, printed June 1991), and on its experience with the current photo-identification system, the licensee stated that the false acceptance rate of the proposed hand geometry system is comparable to that of the current system. The licensee stated that the use of the badges with the hand geometry system would increase the overall level of access control. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan for DCPD will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area.

Environmental Impacts of the Proposed Action

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released off site, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not change any current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the Nuclear Generating Station Diablo Canyon Units 1 and 2", dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on August 23, 1995, the staff consulted with the California State official, Mr. Steve Hsu of the Department of Health Services, regarding the environmental impact statement for the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 5, 1995, and supplements dated July 28, 1995, September 14, 1995 and September 19, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 20th day of September 1995.

For the Nuclear Regulatory Commission.

James C. Stone,

Senior Project Manager, Project Directorate IV-2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

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BILLING CODE 7590-01-P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Policy Letter on Subcontracting Plans for Companies Supplying Commercial Items

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is issuing a Policy Letter on "subcontracting Plans for Companies Supplying Commercial Items."

SUMMARY: Section 8(d) of the Small Business Act (15 U.S.C. 637(d) requires that each contract that exceeds \$500,000 (\$1 million in the case of construction), and that offers subcontracting opportunities, include a requirement that the apparent successful offeror negotiate a subcontracting plan which shall become a material part of the contract. These requirements have been implemented by prior OFPP Policy Letters and subsequent promulgation in the Federal Acquisition Regulation (FAR).

Sections 8104 and 8203 of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103-355, establish a preference for the acquisition of commercial items. In establishing this preference, Congress expressed concern that implementing policies ease the burden of government-unique requirements for companies supplying commercial items. In response to this concern, the policy on subcontracting plans is being revised to reduce the burden of government-unique requirements on contractors that supply commercial items.

This Policy Letter focuses on contracts and subcontracts for "commercial items" as defined in section 8001 of FASA. Annual commercial subcontracting plans that relate to a company's commercial and noncommercial production are authorized for:

- (a) prime contracts for commercial items, or
- (b) subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

In addition, the Policy Letter states that commercial plans, when authorized under the Policy Letter, shall be the preferred method of compliance with the requirements of section 8(d) of the Small Business Act. The policy letter reinforces that these provisions for subcontracting plans for commercial item contractors do not in any way

relieve contracting officers, prime contractors or subcontractors of their responsibilities for assuring that small, small disadvantaged, and women-owned small businesses have the maximum practicable opportunity to participate in contracts awarded by Federal agencies.

SUPPLEMENTARY INFORMATION: A proposed Policy Letter and request for comments was published in the February 7, 1995 Federal Register (60 FR 7229). Forty-three comment letters were received in response to the Federal Register notice, of which, 28 were from the private sector. A summary of the more significant comments received and OFPP responses to them follows:

1. Standard Form 294

Many personnel from the private sector commented that this Policy Letter would eliminate the Standard Form 294, a report that they considered integral as an indication of a government contractor's compliance with federal mandated small business and small disadvantaged business subcontracting goals on a contract by contract basis. While there will be some reduction in the submission of Standard Form 294 as a result of this revised policy, it should be noted that there has been a policy in place since 1980 that allows prime contractors supplying commercial items to use commercial plans which eliminates the requirement to submit the Standard Form 294. This policy was introduced in OFPP Policy Letter 80-2, dated April 29, 1980. For the past fifteen years, prime contractors supplying commercial items have not been required to submit the Standard Form 294. The information has been reported in summary through the Standard Form 295 (Summary Subcontract Report). The new policy letter is drafted to reemphasize the FASA's preference for the acquisition of commercial items. The Conference Report (H.R. 103-712) recognized the specific authority already provided in policy and subsequent regulation for commercial (e.g., corporation, company, division, plant, or product line) rather than contract-by-contract subcontracting plans for subcontractors providing commercial items. The report also noted that traditional business practices by commercial manufacturers does not lend itself to unique government related orders. Under OFPP policy, all other contract awards not involving commercial items will require submission of subcontracting plans on a contract-by-contract basis and the submission of the Standard Form 294.

2. Liquidated Damages

Many personnel from the private sector commented that the Policy Letter eliminates the liquidated damages penalty for government contractors that refuse to comply with subcontracting goals. OFPP has not eliminated the liquidated damages penalty; that language is contained in the FAR and various OFPP Policy Letters. Additional guidance on liquidated damages and the assessment of liquidated damages is contained in the draft Policy Letter on Subcontracting Plans that is being published concurrently with this Policy Letter.

3. Enforcement and Administration of Subcontracting Plans

Some personnel from both the government and private sector stated that more guidance is needed on enforcement and administration of subcontracting plans. We agree that the government needs to more strongly administer and monitor subcontracting plans. In order to emphasize that policy, we are publishing a draft Policy Letter on Subcontracting Plans concurrently with this Policy Letter. The draft Policy Letter on Subcontracting Plans especially focuses on the contracting officer's responsibility to monitor the plan and list methods that the contracting officer can use in considering whether a good faith effort has been made.

4. Inconsistencies With Past Policy Letters

A few commentors stated that the Policy Letter is inconsistent with past Policy Letters. We are adding language to this Policy Letter that states that it supersedes any provision inconsistent with prior policy letters. We are also publishing a draft Policy Letter on Subcontracting Plans concurrently with this Policy Letter that, when issued in final, will supersede and cancel OFPP Policy Letter 80-1, "Public Law 95-507, Section 211, Subcontracting: Agency Coordination with the Small Business Administration Resident Procurement Center Representatives," dated January 24, 1980; OFPP Policy Letter 80-2, "Regulatory Guidance on Section 211 of Public Law 95-507," dated April 29, 1980; Supplement No. 1 to Policy Letter 80-2, dated May 29, 1981; and OFPP Policy Letter 80-4, "Women's Business Enterprise Program," dated April 29, 1980.

5. Classification of Commercial Items

Several commentors requested that OFPP develop a comprehensive list of commercial items with appropriate product and service codes in order to

avoid confusion regarding what purchases qualify for the designation of commercial items. OFPP feels that the definition of commercial items in FASA and the corresponding implementing regulations provides sufficient information on what constitutes a commercial item. The development of a comprehensive list to be used by agencies would be time consuming, inflexible, require constant updating, and impose micro-management.

DATES: The Policy Letter is effective 30 days from the date of issuance. It directs that governmentwide regulations be promulgated to implement the policies contained therein within 210 days from the date this Policy Letter is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

William Coleman, Deputy Administrator, 202-395-3503 or Linda Mesaros, Deputy Associate Administrator, 202-395-4821. The address is Office of Federal Procurement Policy, 725 17th Street, NW, New Executive Office Building, Room 9001, Washington, DC 20503. To obtain a copy of this Policy Letter, please call the Executive Office of the President's Publication Office at 202-395-7332. Steven Kelman, Administrator.

Policy Letter 95-1

To the Heads of Executive Departments and Establishments

Subject: Subcontracting Plans for Companies Supplying Commercial Items

1. *Purpose.* The purpose of this Policy Letter is to establish policies on the requirement for subcontracting plans for companies supplying commercial items.

2. *Authority.* This Policy Letter is issued pursuant to section 6 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405.

3. *Definition.* Commercial plan means a subcontracting plan covering the offeror's fiscal year and which is applicable to the entire production of commercial items sold by either the entire company or portion thereof (e.g., corporation, company, division, plant, or product line). As used in this Policy Letter, the term "commercial item" is a product of service that satisfies the definition of commercial item in section 8001 of FASA (41 U.S.C. 403).

4. *Background.* Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that each contract that exceeds \$500,000 (\$1 million in the case of construction), and that offers subcontracting opportunities, include a requirement that the apparently successful offeror negotiate a subcontracting plan which shall become a material part of the contract. The requirement for subcontracting plans does not apply to small businesses. The above requirements have been implemented by OFPP Policy Letter 80-2 "Regulatory Guidance on Section 211 of Public Law 95-507" dated April 29, 1980, and Supplement

No. 1 dated May 29, 1981, and further implemented in Part 19 of the Federal Acquisition Regulation (FAR). OFPP Policy Letter 80-2 specifically authorized the use of an annual commercial subcontracting plan that relates to the contractor's commercial and noncommercial production when the government is acquiring a commercial item.

Sections 8104 and 8203 of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103-355, establish a preference for the acquisition of commercial items by the Department of Defense and civilian agencies. In establishing this preference, Congress expressed concern that implementing policies ease the burden of government-unique requirements for companies supplying commercial items. The Conference Report (H.R. 103-712) recognizes the unique circumstance faced by commercial contractors and the specific authority already provided in regulation and policy for commercial plans rather than contract-by-contract plans.

The report cites OFPP Policy Letter 80-2, FAR 52.219-9(g), and 519.704(b) of the General Services Administration Acquisition Regulation which provide express authority for commercial plans. The Report states:

"Because *contractors and subcontractors* offering commercial items tend to rely on their existing network of suppliers rather than entering new subcontracts to fill government orders, the requirements applicable to the company-wide subcontracting plans of commercial companies differ from the requirements applicable to individual subcontracting plans of non-commercial companies. See e.g. sections 519.704(c)(2), 519.705-5 and 519.705-6(b) of the GSA FAR Supplement. For example, a single company-wide plan authorized by these regulations is likely to address subcontracting opportunities at both the prime contract and subcontract levels, obviating the need for the filing of individual contract-by-contract or subcontract-by-subcontract plans. Title VIII of the bill is not intended to require any changes to such practices." (emphasis added)

In response to this concern, the policy on subcontracting plans is being revised to reduce the burden of government-unique requirements on prime contractors and subcontractors that supply commercial items.

5. *Policy.* The following policy applies governmentwide to contracts and subcontracts for "commercial items" as defined in section 8001 of FASA and implementing regulations:

(1) It is a fundamental policy of the Federal government that a fair proportion of its contracts be placed with small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women and that such businesses participate in subcontracting under government prime contracts.

(2) When the requirements for a subcontracting plan under section 8(d) of the Small Business Act apply, annual commercial subcontracting plans that relate to a company's commercial and noncommercial production are authorized for:

(a) prime contracts for commercial items, or

(b) subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(3) Furthermore, it is the policy of the United States Government that commercial plans, when authorized under this Policy Letter, shall be the preferred method of compliance with the requirements of section 8(d) of the Small Business Act. In all solicitations expected to offer subcontracting opportunities which trigger the requirements for a subcontracting plan, the Government shall inform prospective offerors of the opportunity for themselves and/or their subcontractors to develop commercial plans if they are supplying commercial items. This would apply whether or not the prime contractor is supplying a commercial item.

(4) This policy is in addition to the existing policies cited in Section 3 of this Policy Letter. This Policy Letter supersedes any provisions inconsistent with prior OFPP Policy Letters.

6. *Contracting Officer Responsibilities.* Contracting officers shall ensure that:

(1) These provisions for subcontracting plans for commercial item contractors do not in any way relieve contracting officers, prime contractors or subcontractors of their responsibilities for assuring that small, small disadvantaged and women-owned small businesses have the maximum practicable opportunity to participate in contracts awarded by Federal agencies.

(2) The use of a commercial subcontracting plan does not relieve a contractor of the requirement to make a good faith effort to comply with the requirements of the subcontracting plan.

(3) Contracting officers should impose liquidated damages as applicable when contractors fail to comply with subcontracting plans.

(4) When a contractor has a commercial plan previously approved by another agency's contracting activity or another Federal agency for the company's fiscal year, the contracting officer shall obtain a copy of the plan and the approval document from the contractor. These documents shall be incorporated into the contract.

(5) Since a commercial plan may be applicable to contracts awarded by more than one contracting activity or Federal agency, contracting officers must ensure that the commercial plan is not allowed to expire prior to the negotiation of a new commercial plan. This eventually may occur when the contract of the contracting officer monitoring the plan is completed and no new contract is awarded to that contractor during the contractor's fiscal year. To prevent such an occurrence, 30 days prior to contract completion, the contracting officer monitoring the commercial plan shall obtain from the contractor the name of the contracting officer administering the contract with the latest completion date and arrange for the transfer of the monitoring responsibilities to that contracting officer.

7. *Regulatory Responsibilities.* The Federal Acquisition Regulatory Council shall ensure that the policies established herein are

incorporated in the FAR within 210 days from the date this Policy Letter is published in the Federal Register. Promulgation of final regulations within that 210 day period shall be considered issuance in a "timely manner" as prescribed in 41 U.S.C. 405(b).

8. *Information Contact.* Questions regarding this Policy Letter should be directed to William Coleman, Deputy Administrator, 202-395-3505 or Linda Mesaros, Deputy Associate Administrator, 202-395-4821, facsimile 202-395-5105. The address is Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503.

9. *Judicial Review.* This Policy Letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any persons. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this Policy Letter.

10. *Effective Date.* This Policy Letter is effective 30 days after the date of issuance. Steven Kelman,

Administrator.

[FR Doc. 95-23881 Filed 9-25-95; 8:45 am]

BILLING CODE 3110-01-M

Office of Federal Procurement Policy; Policy Letter on Subcontracting Plans

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is requesting comments on a proposed Policy Letter on Subcontracting Plans as required by section 8(d) of the Small Business Act and amended by the Federal Acquisition Streamlining Act of 1994 (FASA).

SUMMARY: It is a fundamental policy of the United States Government that a fair proportion of its contracts be placed with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women and that such businesses be provided the maximum practicable opportunity to participate as subcontractors in the performance of Government prime contracts consistent with their efficient performance.

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that before award can be made of a contract that

exceeds \$500,000 (\$1 million in the case of construction of a public facility) to other than a small business concern, the apparent successful offeror must negotiate a subcontracting plan describing how it will provide subcontracting opportunities to small businesses.

This Policy Letter, when issued in final, will supersede and cancel OFPP Policy Letter 80-1, "Pubic Law 95-507, Section 211, SubContracting: Agency Coordination with the Small Business Administration Resident Procurement Center Representatives," dated January 24, 1980; OFPP Policy Letter 80-2, "Regulatory Guidance on Section 211 of Public Law 95-507," dated April 29, 1980; Supplement No. 1 to Policy Letter 80-2, dated May 29, 1981; and OFPP Policy Letter 80-4, "Women's Business Enterprise Program," dated April 29, 1980. The Policy Letter consolidates previously issued guidance contained in the above Policy Letters; adds clarification on issues that have arisen since the issuance of the earlier Policy Letters; addresses the FASA concern about the burden of government-unique requirements for companies supplying commercial items by establishing a preference for commercial plans; and provides additional guidance on the administration and enforcement of subcontracting plans and liquidated damages.

COMMENT DATE: Comments must be received on or before November 27, 1995.

ADDRESSES: Comments should be submitted to Linda Mesaros, Deputy Associate Administrator, Office of Federal Procurement Policy, New Executive Office Building, Room 9001, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda Mesaros at 202-395-4821.

Steven Kelman,
Administrator.

Policy Letter 94-X

To the Heads of Executive Departments and Establishments

Subject: Policy Regarding SubContracting Plans

1. *Purpose.* This directive provides Executive Branch policies concerning subcontracting plans required by section 8(d) of the Small Business Act (15 U.S.C. 637(d)) as amended by the Federal Acquisition Streamlining Act of 1994 (FASA).

2. *Supersession Information.* This Policy Letter supersedes and cancels OFPP Policy Letter 80-1, Public Law 95-507, Section 211, "Subcontracting: Agency Coordination with the Small Business Administration Resident Procurement Center Representatives," dated January 24, 1980; OFPP Policy Letter 80-2, "Regulatory Guidance on Section 211 of

Public Law 95-507," dated April 29, 1980; Supplement No. 1 to Policy Letter 80-2, dated May 29, 1981; and OFPP Policy Letter 80-4, "Women's Business Enterprise Program," dated April 29, 1980.

3. *Authority.* This Policy Letter is issued pursuant to section 6 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405.

4. *Definitions.*

a. *Small business concern.* Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121.

b. *Small business subcontractor.* Means a concern, including its affiliates, whose (1) number of employees does not exceed 500 employees, provided the subcontract is \$10,000 or less, or (2) number of employees or average annual receipts does not exceed the size standard under 13 CFR 121.601 when the value of the product or service it is providing on a subcontract exceeds \$10,000.

c. *Small disadvantaged business concern.* Normally means a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and that has its management and daily business controlled by one or more such individuals. The term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one of these entities, that has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and that meets the requirements of 13 CFR Part 124. This definition may not apply to all agencies when a different one is established by statute.

d. *Socially disadvantaged individuals.* Means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals. Individuals who certify that they are members of these named groups, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Subcontinent-Asian Americans, are considered to be socially disadvantaged.

(1) Subcontinent-Asian Americans means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, Nepal, or the Maldive Islands.

(2) Asian-Pacific Americans means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia,