

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 14, and 32

[FAR Case 2000-404]

RIN 9000-A181

Federal Acquisition Regulation; Definitions for Classified Acquisitions

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) to provide consistent definitions for classified acquisitions. This case is one of a series of cases in response to the White House memorandum, Plain Language in Government Writing, dated June 1, 1999.

The Councils' proposed amendments are intended only to reorganize, simplify, and clarify the FAR. The Councils do not intend to make any substantive changes to the FAR by these amendments. Comments should address any potential unintended substantive changes to the FAR resulting from the proposed amendments.

DATES: Submit comments on or before September 26, 2000 to be considered in the formulation of a final rule.

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

Submit electronic comments via the Internet to: farcase.2000-404@gsa.gov.

Please submit comments only and cite FAR case 2000-404 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 Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAR case 2000-404.

SUPPLEMENTARY INFORMATION:

A. Background

The rule amends the Federal Acquisition Regulation (FAR) to address perceived inconsistencies in definitions that are used for classified acquisitions. The rule moves the definitions of "classified acquisition," "classified contract," and "classified information" from FAR 4.401 to FAR 2.101 because the definitions apply to more than one FAR part. Those definitions also have been amended in accordance with plain language guidelines. We have also amended the policy regarding bid openings for classified acquisitions at FAR 14.402-2 to conform to plain language guidelines.

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 while we have made changes in accordance with plain language guidelines, we have not substantively changed procedures for award and administration of contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 14, and 32 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 2000-404), 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 2, 4, 14, and 32

Government procurement.

Dated: July 24, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 4, 14, and 32 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 14, and 32 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 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding, in alphabetical order, the definitions "classified acquisition", "classified contract", and "classified information" to read as follows:

2.101 Definitions.

* * * * *

Classified acquisition means an acquisition in which offerors must have access to classified information to properly submit an offer or quotation, to understand the performance requirements, or to perform the contract.

Classified contract means any contract in which the contractor or its employee must have access to classified information during contract performance. A contract may be a classified contract even though the contract document itself is unclassified.

Classified information means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that—

(1) Is owned by, produced by or for, or is under the control of the United States Government; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, as amended, or classified in accordance with the Atomic Energy Act of 1954, as amended.

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PART 4—ADMINISTRATIVE MATTERS**4.401 [Reserved]**

3. Section 4.401 is removed and reserved.

PART 14—SEALED BIDDING**14.103-1 [Amended]**

4. Amend section 14.103-1 in paragraph (c) by removing “(see 4.401)”.

5. Section 14.402-2 is revised to read as follows:

14.402-2 Classified bids.

The general public may not attend bid openings for classified acquisitions. A bidder or its representative may attend and record the results if the individual has the appropriate security clearance. The contracting officer may also make the bids available at a later time to properly cleared bidders or their properly cleared representatives. The contracting officer must not make a

public record of the bids or the bid prices.

PART 32—CONTRACT FINANCING**32.1103 [Amended]**

6. Amend section 32.1103 in paragraph (d) by removing “(see 4.401)”.

[FR Doc. 00-19077 Filed 7-27-00; 8:45 am]

BILLING CODE 6820-EP-M