

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 44 and 52

[FAR Case 2002-021]

RIN 9000-AJ75

Federal Acquisition Regulation; Subcontracts for Commercial Items and Commercial Components

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 require that the clause regarding Subcontracts for Commercial Items and Commercial Components be inserted in solicitations and contracts other than those for commercial items.

DATES: Interested parties should submit comments in writing on or before December 26, 2003 to be considered in the formulation of a final rule.

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

Submit electronic comments via the Internet to—farcase.2002-021@gsa.gov. Please submit comments only and cite FAR case 2002-021 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 Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAR case 2002-021.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR 44.403 by requiring the use of the clause at

52.244-6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts other than those for commercial items.

The current clause prescription requires use of the clause in solicitations and contracts for “supplies or services” other than commercial items. It is not clear whether this includes solicitations and contracts for construction.

The revised clause prescription clarifies that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts.

The rule also amends the clause language to clarify that, within the context of 52.244-6, a commercial item would include commercial construction materials but would not include construction itself.

This is not a significant regulatory action and, therefore, as not subject to 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 it is a clarification of existing policy. Inclusion of FAR clause 52.244-6 reduces the number of flowdown clauses required in subcontracts for commercial items and commercial components. 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 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 2002-021), 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 44 and 52

Government procurement.

Dated: October 21, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 44 and 52 as set forth below:

1. The authority citation for 48 CFR parts 44 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

2. Revise section 44.403 to read as follows:

§ 44.403 Contract clause.

The contracting officer shall insert the clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts other than those for commercial items.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

§ 52.213-4 [Amended]

3. Amend section 52.213-4 by revising the date of the clause to read “(Date)”; and removing “(Apr 2003)” from paragraph (a)(2)(vi) and adding “(Date)” in its place.

4. Amend section 52.244-6 by revising the date of the clause; and in paragraph (a) by revising the definition “Commercial item” to read as follows:

§ 52.244-6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (DATE)

(a) * * *

Commercial item has the meaning contained in the clause at 52.202-1, Definitions, and includes commercial construction materials but does not include construction itself.

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