For additional information, see the direct final Notice of Deletion which is located in the Rules section of this Federal Register.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.


Dated: August 3, 2010

A. Stanley Meiburg,
Acting Regional Administrator, Region 4.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6 and 19

[FAR Case 2009–038, Docket 2010–0095; Sequence 1]

Federal Acquisition Regulation; Tribal Consultation; Justification and Approval of Sole-Source (a) Contracts

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

ACTION: Notice of tribal consultation and outreach meetings and request for comments.

SUMMARY: The Federal Acquisition Regulatory Council (FAR Council) will hold tribal consultation and outreach meetings to discuss rulemaking associated with section 811 of the National Defense Authorization Act (NDAA) for FY 2010, Public Law 111–84. Section 811 addresses requirements for the justification and approval of sole-source contracts over $20 million under the 8(a) small business development program. Presentations made during the meetings will be taken into consideration by the FAR Council as it develops changes to the Federal Acquisition Regulation (FAR) to implement section 811.

DATES: The meetings will be held during the month of October in Washington, DC, Albuquerque, NM, and Fairbanks, AK. For more detailed information about the consultation registration procedures, dates, location, times, and agendas, please see http://www.acq.osd.mil/dpap/dars/section811.html.

FOR FURTHER INFORMATION CONTACT: For questions about registration, the submission of comments, or for clarification of the subject matter of the consultation and outreach, submit them to the e-mail address identified at http://www.acq.osd.mil/dpap/dars/section811.html. Please put “Consultation Questions” in the subject line of the e-mail.

SUPPLEMENTARY INFORMATION:

A. Additional Information

Procedures for the consultation and outreach: The FAR Council respectfully requests that any elected or appointed representatives of the tribal communities that are interested in attending the consultation and outreach meeting preregister and indicate whether they would like to make a presentation during the meeting. Registration is on a first-come first-served basis. To pre-register, please go to http://www.acq.osd.mil/dpap/dars/section811.html and send an e-mail to the address identified on the site with your name, organization affiliation, address, telephone number, e-mail address, and fax number, and indicate which consultation and outreach session you are interested in attending. Please put “Consultation Registration” in the subject line of the e-mail.

Formal oral presentations: The purpose of these consultations and outreach is to encourage meaningful dialogue with tribal officials regarding the development of federal acquisition policy when implementing section 811 of the NDAA 2010. In addition, participants interested in making formal oral presentations during the meeting should provide the following information by the preregistration deadline stated on http://www.acq.osd.mil/dpap/dars/section811.html: Name, organization affiliation, address, telephone number, e-mail address, and fax number. Based on the number of registrants requesting time for presentations, the FAR Council may ask participants to limit the length of their formal presentations so that all attendees wishing to speak have the opportunity to be heard and there is adequate time for discussion.

Written comments: The FAR Council welcomes written statements from attendees making oral presentations, other attendees, and members of the tribal communities who...
are unable to attend the meeting but wish to share their views on the development of regulations to implement section 811. Written comments may be submitted to the e-mail address identified at http://www.acq.osd.mil/dpap/dars/section811.html. Please provide your name, organization affiliation, address, telephone number, e-mail address, and fax number. Please put “Consultation Comments” in the subject line of the e-mail. Parties wishing to have their written comments shared at the meeting should ensure comments are received by the deadlines stated on Web site.

Meeting accommodations: The meeting is physically accessible to persons with disabilities. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Special Assistance Contact via the telephone number or e-mail address listed on http://www.acq.osd.mil/dpap/dars/section811.html.

B. Background

Section 811 of the FY 2010 NDAA establishes a new requirement for Federal agencies to justify a sole-source contract award to a business under the Small Business Administration’s 8(a) business development program, including businesses owned by Indian Tribes and Alaska Native Corporations, if the sole-source award is to exceed $20 million. The 8(a) program enables contract awards to be made to socially and economically disadvantaged small business concerns using the Small Business Administration (SBA) as the prime contractor to the requiring agency.

Section 811 states that a sole-source justification must include the following information: (1) A description of the needs of the agency concerned for the matters covered by the contract, (2) a specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract, (3) a determination that the use of a sole-source contract is in the best interest of the agency concerned, (4) a determination that the anticipated cost of the contract will be fair and reasonable, and (5) such other matters as the head of the agency concerned shall specify. Before an award can be made, the justification must be approved by an appropriate official, as specified in statute. Section 811 does not require a justification and approval (J&A) if the contract award is equal to or less than $20 million. Similar to the handling of J&As for other sole-source awards, J&As prepared pursuant to section 811 must be made public within 14 days after contract award is made. Finally, section 811 requires that the FAR—the government-wide regulation governing the Federal acquisition process—be revised to reflect its revisions.

The FAR Council is responsible for overseeing the development and maintenance of the FAR, including changes to implement section 811. Its members include the Administrator for Federal Procurement Policy, who serves as the chair of the Council and is a senior official in the Office of Management and Budget, and senior acquisition officials from the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration.

The FAR Council believes the conduct of tribal consultation and outreach in connection with section 811 will be a valuable component of its deliberations, both oral and written, along with any written comments received. Following consultation and outreach and analysis of comments from the tribal community, the FAR Council will prepare a rule for review by the Office of Management and Budget pursuant to Executive Order 12866, Regulatory Planning and Review. Members of the public at large, as well as tribal officials, will have the opportunity to provide written comments on FAR changes to implement section 811, which will be considered by the FAR Council, before a final rule is promulgated.

Dated: August 26, 2010.

Edward Loeb,
Director, Acquisition Policy Division.

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