

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 8, 44, and 52**

[FAR Case 1999-017]

RIN 9000-A182

**Federal Acquisition Regulation; JWOD
Subcontract Preference Under Service
Contracts**

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 implement changes relating to preferences for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day (JWOD) (41 U.S.C. 48)).

DATES: Interested parties should submit comments in writing on or before September 1, 2000, to be considered in the formulation of a final rule.

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

Submit electronic comments via the Internet to: farcase.1999-017@gsa.gov.

Please submit comments only and cite FAR case 1999-017 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 Mrs. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAR case 1999-017.

SUPPLEMENTARY INFORMATION:**A. Background**

The proposed rule amends—

- FAR Part 8 to extend the priority for award of service contracts that will satisfy agency requirements that are available from the Committee for Purchase From People Who Are Blind or Severely Disabled to subcontracts

when contractors purchase the services for Government use;

- FAR part 44 to add purchase from nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled to the list of items a contracting officer must consider when reviewing a subcontract that is subject to the procedures at FAR Subpart 44.2, Consent to Subcontracts; and
- The clause at FAR 52.208-9, Contractor Use of Mandatory Sources of Supply, to inform offerors and contractors that certain services to be provided for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled.

These amendments implement changes in the Committee for Purchase From People Who Are Blind or Severely Disabled regulations (41 CFR 51-5.5(e)).

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 changes may 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 contains a priority for subcontracts under services contracts with nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The rule implements 41 CFR 51-5.5(e) relating to preferences for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)). The proposed rule will apply to all large and small entities that seek award of a subcontract under a Government services contract. Although awards of subcontracts to certain small entities may decrease as a result of the rule, the decrease will be offset by an increase in awards to nonprofit workshops. Nonprofit workshops meet the size standards for most acquisitions. Therefore, we do not expect the total number of subcontract awards to small entities to change as a result of this rule.

A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR

parts 8, 44, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 1999-017), 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 8, 44, and 52

Government procurement.

Dated: June 21, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 8, 44, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 8, 44, 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 8—REQUIRED SOURCES OF
SUPPLIES AND SERVICES**

2. Amend section 8.001 by revising paragraph (c) to read as follows:

8.001 Priorities for use of Government supply sources.

* * * * *

(c) The statutory obligation for Government agencies to satisfy their requirements for supplies or services available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supplies or services for Government use.

3. Revise section 8.003 to read as follows:

8.003 Contract clause.

Insert the clause at 52.208-9, Contractor Use of Mandatory Sources of Supply and Services, in solicitations and contracts that require a contractor to provide supplies or services for Government use that are available from the Committee for Purchase From People Who Are Blind or Severely Disabled. The contracting officer must identify in the contract schedule the supplies or services that must be purchased from a mandatory source and the specific source.

**PART 44—SUBCONTRACTING
POLICIES AND PROCEDURES**

4. In section 44.202-2, amend the introductory text of paragraph (a) by

removing "shall" and adding "must" in its place; and revising paragraph (a)(4) to read as follows:

44.202-2 Considerations.

(a) * * *

(4) Has the contractor complied with the prime contract requirements regarding—

(i) Small business subcontracting, including, if applicable, its plan for subcontracting with small, small disadvantaged and women-owned small business concerns (see part 19); and

(ii) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)) (see part 8)?

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. In section 52.208-9, revise the section and clause headings, paragraphs (a) and (b), and the second sentence in paragraph (c) to read as follows:

52.208-9 Contractor Use of Mandatory Sources of Supply or Services.

* * * * *

Contractor Use of Mandatory Sources of Supply or Services (Date)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.

(c) * * * For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. * * *

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(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 2000-300]

RIN 9000-A183

Federal Acquisition Regulation; Truth in Negotiations Act Threshold

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 implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

DATES: Interested parties should submit comments in writing on or before September 1, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.2000-300@gsa.gov

Please submit comments only and cite FAR case 2000-300 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. Jeremy Olson, at (202) 501-0692. Please cite FAR case 2000-300.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR 15.403-4 to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995. The proposed increase of \$50,000 is based on escalation of 10.22 percent from 1994 to 2000, calculated using the gross domestic product

deflators from the fiscal year 2001 budget.

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 most contracts and subcontracts with small entities do not require the submission of cost or pricing data. 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 Part 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 2000-300), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, the proposed changes to the FAR do not significantly change the information collection requirements that have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, under OMB Clearance Number 9000-0045.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 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).

2. Amend section 15.403-4 by revising paragraph (a)(1) to read as follows:

15.403-4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) The contracting officer must obtain cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403-1(b) applies. However, if the contracting officer has sufficient information available to