

approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 15 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 15.306 in paragraph (d)(1) by removing “shall” and inserting “must” in its place; by revising paragraph (d)(3); and by redesignating paragraph (d)(4) as (d)(5) and adding a new (d)(4) to read as follows:

15.306 Exchanges with offerors after receipt of proposals.

* * * * *

(d) * * *

(3) At a minimum, the contracting officer must, subject to paragraphs (d)(5) and (e) of this section and 15.307(a), indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. The contracting officer also is encouraged to discuss other aspects of the offeror’s proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal’s potential for award. However, the contracting officer is not required to discuss every area where the proposal could be improved. The scope and extent of discussions are a matter of contracting officer judgment.

(4) In discussing other aspects of the proposal, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the Government may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the

excesses were removed and the offered price decreased.

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[FR Doc. 01–30542 Filed 12–17–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2001–02; FAR Case 2000–017; Item VI]

RIN 9000–AJ25

Federal Acquisition Regulation; Definition of Subcontract in FAR Subpart 15.4

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to exclude section 15.407–2 from application of the expanded definition of “subcontract” at FAR 15.401.

DATES: *Effective Date:* February 19, 2002.

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. Jeremy Olson, at (202) 501–3221. Please cite FAC 2001–02, FAR case 2000–017.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule excludes section 15.407–2 from application of the expanded definition of “subcontract” at FAR 15.401. This definition of “subcontract” is derived from the Truth in Negotiations Act (10 U.S.C. 2306a(h)(2) and 41 U.S.C. 254b(h)(2)). Prior to the rewrite of Part 15, this definition applied only to Subpart 15.8, Price Negotiation, and did not apply to Subpart 15.7, Make-or-Buy Programs, or Subpart 15.9, Profit. The rewrite combined these three subparts into the new Subpart 15.4, Contract Pricing. However, application of the expanded definition creates a conflict with the

definitions of “buy item” and “make item” in section 15.407–2, Make-or-buy programs. As defined in section 15.407–2, “buy item” means an item or work effort to be produced or performed by a subcontractor. “Make item” means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions. In this context, a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor is not considered to be a “subcontract.” This is not a significant regulatory action and, therefore, 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 final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required.

However, the Councils will consider comments from small entities concerning the affected FAR part 15 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.* (FAC 2001–02, FAR case 2000–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 Part 15

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 15 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).

15.401 [Amended]

2. Amend section 15.401 in the definition of “Subcontract” by adding the parenthetical “(except as used in

15.407-2) following the word "Subcontract".

[FR Doc. 01-30543 Filed 12-17-01; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 12, 19, 23, 52, and 53

[FAC 2001-02; FAR Case 2000-604; Item VII]

RIN 9000-A175

Federal Acquisition Regulation; North American Industry Classification System

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are finalizing, with minor changes, the interim rule concerning the North American Industry Classification System (NAICS), that was published in the *Federal Register* at 65 FR 46055, July 26, 2000. The rule converts size standards and other programs in the Federal Acquisition Regulation (FAR) based on the Standard Industrial Classification (SIC) system to NAICS.

DATES: *Effective Date:* December 18, 2001.

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 Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAC 2001-02, FAR case 2000-604.

SUPPLEMENTARY INFORMATION:

A. Background

NAICS is a new system that classifies establishments according to how they conduct their economic activity. It is a significant improvement over the SIC. On May 15, 2000, the Small Business Administration (SBA) published a final rule basing small business size standards on NAICS rather than SIC codes effective the start of the Federal Government's fiscal year 2001.

In addition, this rule includes two technical amendments. FAR 19.102(h)

updates the Internet address for the industry size standards published by the Small Business Administration. FAR 19.1005(a) reinstates language omitted inadvertently.

An interim rule was published in FAC 97-19 in the *Federal Register* at 65 FR 46055, July 26, 2000, to conform the FAR to the changes issued by SBA to the size standards and convert other programs in the FAR currently based on SIC codes to NAICS. Two comments were received in response to the interim rule. Those comments were considered in formulation of the final rule.

This is not a significant regulatory action, and therefore, was 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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 coding changes are primarily internal to the Federal Government. External uses of the codes under the small business subcontracting program and small disadvantaged business participation programs are primarily limited to large businesses and involve only use of NAICS rather than SIC tables.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 5, 12, 19, 23, 52, and 53

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final With Minor Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 5, 12, 19, 23, 52, and 53, which was published in the *Federal Register* at 65 FR 46055, July 26, 2000, as a final rule with the following changes:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 19 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. In section 19.102, revise paragraph (h) to read as follows:

19.102 Size standards.

* * * * *

(h) The industry size standards are published by the Small Business Administration and are available via the Internet at <http://www.sba.gov/size>.

19.1005 [Amended]

3. Amend section 19.1005 in the heading of the table in paragraph (a) by removing "Construction" and adding "Construction (except dredging)" in its place.

[FR Doc. 01-30544 Filed 12-17-01; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2001-02; FAR Case 2001-025; Item VIII]

RIN 9000-AJ26

Federal Acquisition Regulation; Iceland—Newly Designated Country Under the Trade Agreements Act

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the accession of Iceland to the Agreement on Government Procurement, by adding Iceland as a designated country under the Trade Agreements Act.

DATES: *Effective Date:* December 18, 2001.

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