

Public Law 108–136. Section 842 removes the requirement for contractors under cost-reimbursement contracts with the Department of Defense (DoD), Coast Guard, and National Aeronautics and Space Administration (NASA) to notify the agency before the award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract if the contractor maintains a purchasing system approved by the contracting officer for the contract.

The final rule differs from the interim rule in that it deletes Alternate I in its entirety. The Councils adopted the suggestion in a public comment that deletion of Alternate I would be a less confusing means of implementing the statute than amending Alternate I. Renumbering has occurred in FAR 44.204 and 52.244–2 as a result of the deletion of Alternate I.

In addition, the interim rule made a technical amendment to Alternate II of the FAR clause at 52.244–2, Subcontracts. The interim rule deleted the reference to paragraph (c) from paragraph (f)(2) of Alternate II (now renumbered Alternate I in the final rule) because paragraph (c) applies to fixed-price type contracts, whereas Alternate II (now renumbered Alternate I in the final rule) applies to cost-reimbursement contracts.

Two comments were received from one respondent.

Comment: The respondent noted that the purpose of the FAR change is, in the case of DoD, the Coast Guard, and NASA, to eliminate the requirement for the contractor to notify the agency before award of certain subcontracts when the contractor has an approved purchasing system. The respondent stated that the language in the interim rule is confusing and suggested eliminating Alternate I of 52.244–2 instead.

Response: Concur. The final rule deletes Alternate I.

Comment: The respondent suggested rewriting Alternate II of the FAR clause at 52.244–2 and FAR 44.201–2 to have the language match what is in 52.244–2(d)(1).

Response: Nonconcur. Paragraph (d)(1) of the FAR clause at 52.244–2 specifies the contract types—cost-reimbursement, time-and-materials, and labor-hour—subject to subcontract consent requirements. Alternate II specifies the contract types—cost-plus-fixed-fee and fixed-price—subject to advance notification requirements even when subcontract consent is not required. These two procedures are

separate statutory requirements and apply to different contract types.

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 it will have a small positive effect. Small businesses do not usually hold prime contracts which are cost-reimbursement contracts, so this section would not apply to them, and any change would not apply.

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 44 and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

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

■ 1. The authority citation for 48 CFR parts 44 and 52 continues 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. Amend section 44.204 by revising paragraph (a)(2) to read as follows:

44.204 Contract clauses.

(a)(1) * * *

(2) If a cost-reimbursement contract is contemplated, for civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, the contracting officer shall use the clause with its Alternate I.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.244–2 by—
 ■ a. Removing Alternate I; and
 ■ b. Redesignating Alternate II as Alternate I; and revising the introductory paragraph to read as follows:

52.244–2 Subcontracts.

* * * * *

Alternate I (JAN 2006). As prescribed in 44.204(a)(2), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

* * * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005–07; FAR Case 2005–006; Item X]

RIN 9000–AK38

Federal Acquisition Regulation; Annual Representations and Certifications – NAICS Code/Size

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 modify the provision regarding Annual Representations and Certifications to include a section whereby the contracting officer can insert the appropriate North American Industry Classification System (NAICS) code and small business size standard for the procurement. Its exclusion in the original drafting of the subject provision was an oversight. When the FAR provision is included in a solicitation, the provision regarding Small Business Program Representations, where this information is normally placed, is not included. Without this change, there is no standard way in which the NAICS code and small business size standard can be communicated to the vendor.

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Gerald Zaffos at (202) 208-6091. The TTY Federal Relay Number for further information is 1-800-877-8973. Please cite FAC 2005-07, FAR case 2005-006. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The final rule amends the Federal Acquisition Regulation by modifying the provision at FAR 52.204-8 to include a new paragraph (a) that replicates the same paragraph of the provision at FAR 52.219-1(a).

Federal Acquisition Circular (FAC) 2001-026 made effective the use of the provision at FAR 52.204-8 for most procurements. The prescription for its use also directs that the provision at FAR 52.219-1(a) not be included in solicitations, as it is now included in the Online Representations and Certifications Application (ORCA). The FAR provision at 52.219-1(a), when it is included in solicitations, is the place wherein the contracting officer includes the NAICS code and small business size standard applicable to the procurement. There needs to be a similar paragraph available in FAR 52.204-8, the exclusion of which was an oversight in FAC 2001-026.

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 Regulatory Flexibility Act does not apply to this rule. This 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 comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 52 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 2005-07, FAR case 2005-006), 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 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 continues to read as follows:

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

■ 2. Amend section 52.204-8 by—

■ a. Revising the date of the provision;

■ b. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

■ c. Adding a new paragraph (a); and

■ d. Removing from newly designated paragraph (b)(1) and the introductory text of paragraph (b)(2) “paragraph (b)” and adding “paragraph (c)” in its place; and removing from newly redesignated (b)(2)(i) and (b)(2)(ii) “Paragraph (b)” and adding “Paragraph (c)” in its place.

■ The revised and added text reads as follows:

52.204-8 Annual Representations and Certifications.

* * * * *

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (JAN 2006)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____ [*insert NAICS code*].

(2) The small business size standard is _____ [*insert size standard*].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 11, 25, 27, 34, 38, 39, 43, 46, 48, 50, and 52

[FAC 2005-07; Item XI]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial corrections and updates the Federal Acquisition Regulation's authority citation.

DATES: *Effective Date:* January 3, 2006.

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. Please cite FAC 2005-07, Technical Amendments.

List of Subjects in 48 CFR Parts 9, 11, 25, 27, 34, 38, 39, 43, 46, 48, 50, and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 9, 11, 25, 27, 34, 38, 39, 43, 46, 48, 50, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 9, 11, 25, and 52 continues to read as follows:

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

■ 2. The authority citation for 48 CFR parts 27, 34, 38, 39, 43, 46, 48, and 50 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 9—CONTRACTOR QUALIFICATIONS

■ 3. Amend section 9.203 by revising paragraph (b)(2) to read as follows:

9.203 QPL's, QML's, and QBL's.

* * * * *

(b) * * *

(2) Department of Defense Acquisition Streamlining and Standardization