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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005-86; FAR Case 2015-019; Item I; Docket 2015-0019, Sequence 1]

RIN 9000-AM96

Federal Acquisition Regulation; Definition of "Multiple-Award Contract"

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to define "multiple-award contract."

DATES: Effective: [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-86, FAR Case 2015-019.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the Federal Register at 80 FR 31342 on June 2, 2015, soliciting public comments regarding the definition of the term "multiple-award contract." The proposed rule was implementing the definition that the U.S. Small Business Administration (SBA) established at 13 CFR 125.1(k) in its final rule which published in the Federal Register at 78 FR 61114 on October 2, 2013. SBA's final rule implemented several provisions of the Small Business Jobs Act of 2010, Pub. L. 111-240. Section 1311 of Pub. L. 111-240 (15 U.S.C. 632(v)) added a definition of "multiple-award contract." One respondent submitted a comment on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comment in the development of the final rule. A discussion of the comment is provided as follows:

A. Summary of significant changes.

There were no changes made to the rule as a result of the comment received. There were no comments on the Regulatory Flexibility Act analysis.

B. Analysis of Public Comments.

Comment: One respondent stated that based on the proposed definition, any award made to multiple sources from one solicitation is a multiple award, even when the requirement is split between offerors and none of the subsequent task orders are competed because each offeror gets part of the overall requirement in the solicitation. The respondent requested that the FAR definition clarify that a multiple-award contract is one that should be subject to fair opportunity.

Response: FAR 16.505(b) (1) provides information concerning fair opportunity. Additional clarity is not needed for the definition of "multiple-award contract" concerning fair opportunity since it is already provided at FAR 16.505(b) (1).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a

significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The final rule amends the FAR to define "multiple-award contract." On October 2, 2013, the Small Business Administration (SBA) issued a final rule in the Federal Register at 78 FR 61114 to implement various sections of the Small Business Jobs Act of 2010 (Public L. 111-240) by establishing new policies and procedures for multiple-award contracts and task and delivery orders. SBA's final rule included a definition of "multiple-award contract". The final rule defines "multiple-award contract" in order to implement that part of SBA's final rule in the FAR.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the proposed rule.

This rule applies to all entities that do business with the Federal Government, but it is not expected to have a significant impact.

This rule does not impose any new reporting, recordkeeping or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 2

Government procurement.

Dated: December 17, 2015.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 2 as set forth below:

PART 2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for 48 CFR part 2 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

2. Amend section 2.101 in paragraph (b) (2) by adding, in alphabetical order, the definition "Multiple-award contract" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Multiple-award contract means a contract that is—

(1) A Multiple Award Schedule contract issued by GSA (e.g., GSA Schedule Contract) or agencies granted Multiple Award Schedule contract authority by GSA (e.g., Department of Veterans Affairs) as described in FAR part 38;

(2) A multiple-award task-order or delivery-order contract issued in accordance with FAR subpart 16.5, including Governmentwide acquisition contracts; or

(3) Any other indefinite-delivery, indefinite-quantity contract entered into with two or more sources pursuant to the same solicitation.

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