Final Procurement Rules & Regulations

This newsletter provides information on topics related to final regulation changes for federal procurement. All Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation (DFAR) clauses can be found at http://farsite.hill.af.mil. Additional information can be found in the Federal Register at http://www.federalregister.gov.

DoD Issues Final Rule to Prevent Counterfeit Electronic Parts from Entering Military Systems

The Department of Defense (DoD) on August 2, 2016 issued a final rule amending supply chain requirements requiring contracting officers to scrutinize contractors' purchase of electronic parts from third parties. If a defense contractor's supplier does not meet the trusted source requirements, the contractor itself is responsible for inspecting, testing and authenticating the parts. The rule's specific guidance will also save contractors time and effort helping them map out procedures in the event that a subcontractor is unwilling or unable to fully authenticate a part. This amendment was designed around existing industry standards and best practices for identifying inferior parts. Concern has arisen that small businesses are now given substantial administrative burdens in documenting part traceability or performing testing and inspection but DoD concluded that counterfeit parts have been deemed such a significant risk that the benefit of avoiding potential part failures outweighs the burden on small businesses. [81 Fed. Reg 50,635, 8/2/16]

DoD Issues Final Rule Addressing Allowability of Costs Related to Counterfeit Electronic Parts

This final rule, issued by the Department of Defense (DoD) on August 30, 2016, amends the Defense Federal Acquisition Regulations (DFARs) section 885(a) of the 2016 National Defense Authorization Act (NDAA). [81 Fed. Reg. 59,510, 8/30/16] The rule affirms that costs of counterfeit electronics parts are generally unallowable but provides that such costs may be allowable if four criteria are met:

- The contractors have an operational system to detect and avoid counterfeit electronic parts that has been reviewed and approved by DoD.
- The counterfeit electronic parts were provided to the contractor as "government property" in accordance with DFARS 252.246-7008.
- The contractor discovers the counterfeit electronic parts through inspections and testing, a Government Industry Data Exchange Program (GIDEP) or other means.
- The contractor provides the contracting officer and GIDEP written notice within 60 days.

GSA Issues Final Rule Regarding Transactional Data Reporting

GSA issued its final rule on June 23, 2016 amending the GSAR to require federal contractors to report on a monthly basis transactional data related to orders placed against certain Federal Supply Schedule contracts, government wide acquisition contracts and government wide IDIQ contracts. The rule calls for electronic reporting of procurement data including: the quantities of item purchased, prices paid, item descriptions, part numbers and manufacturer names. GSA will roll out the final rule in phases beginning with certain schedules contracts and special item numbers. [81 Fed. Reg. 41,104, 06/23/16]
DoD, GSA and NASA Issue Final Rule Incorporating SBA Regulatory Changes on Small Business Subcontracting Plans

DoD, GSA and NASA on July 14, 2016, issued a final rule to implement SBA’s government-wide policy on small business subcontracting plans. The requirements in this rule are meant to improve subcontracting regulations to increase small business opportunities. Some of the changes being implemented include:

(1) Requiring prime contractors to make good faith efforts to utilize their proposed small business subcontractors during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal. To the extent a prime contractor is unable to make a good faith effort to utilize its small business subcontractors as described above, the prime contractor is required to explain, in writing, within 30 days of contract completion, to the contracting officer the reasons why it is unable to do so.

(2) Authorizing contracting officers to calculate subcontracting goals in terms of total contract dollars in addition to the required goals in terms of total subcontracted dollars.

(3) Requiring prime contractors to assign North American Industry Classification System (NAICS) codes to subcontracts.

(4) Restricting prime contractors from prohibiting a subcontractor from discussing payment or utilization matters with the contracting officer.

(5) Requiring prime contractors to provide the socioeconomic status of the subcontractor in the notification to unsuccessful offerors for subcontracts.

(6) Requiring prime contracts with subcontracting plans on task and delivery order contracts to report order level subcontracting information after November 2017.

(7) On indefinite-delivery indefinite-quantity contracts, the contracting officer may establish subcontracting goals at the order level (but not a new subcontracting plan).

The final rule goes into effect on November 1, 2016. [81 Fed Reg. 45,833, 7/14/16]

SBA Issues Final Rule Expanding Mentor-Protégé Program to all Small Businesses

The SBA on July 22, 2016 issued the final rule to establish a Government-wide mentor-protégé program for all small business concerns. The mentor-protégé program allows small businesses (protégés) to form relationships with large businesses (mentors) to receive business development assistance and to help them to compete for government contracts. Mentor assistance can be provided in the areas of management and technical, financial, contracting, trade education, business development, and general and/or administrative.

This program is separate from the SBA’s 8(a) Mentor Protégé Program. However, the rule does make minor changes to the 8(a) Mentor Protégé Program to keep the rules for each program as consistent as possible. The rule also provides clarification on the conditions for creating and operating joint venture partnerships. In addition there are changes to current size, 8(a) Office of Hearings and Appeals and HUBZone regulations, concerning among other things, ownership and control, changes in primary industry, standards of review and interested party status for some appeals. This rule became effective on August 24, 2016. [81 Fed Reg 48,558, 7/25/16]

Upcoming GACO/GCAC Sponsored Events

10/26/16 – GACO/GCAC's 29th Annual Procurement Opportunities Fair, DoubleTree by Hilton-Washington, PA