

(B) Will notify the department or agency of concurrence or non-concurrence. In the case of a non-concurrence, the SCMA, with assistance from the Army Office of the Executive Director for Conventional Ammunition, will attempt to resolve the matter with the department or agency. If no agreement is reached, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) will make the final decision on the appropriate acquisition approach.

* * * * *

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DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252 and Appendix I to Chapter 2

[DFARS Case 2001-D006]

Defense Federal Acquisition Regulation Supplement; DoD Pilot Mentor-Protege Program

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 807 of the National Defense Authorization Act for Fiscal Year 2001. Section 807 adds women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program.

DATES: *Effective date:* September 11, 2001.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 13, 2001, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2001-D006 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD (AT&I) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2001-D006.

At the end of the comment period, interested parties may view public

comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602-1302.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). Section 807 adds women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program. The rule also clarifies that business concerns owned and controlled by an Indian tribe or a Native Hawaiian organization are eligible to participate as protege firms in the Program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD expects this 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.* An initial regulatory flexibility analysis has been prepared and is summarized as follows: This interim rule permits women-owned small business concerns to participate as protege firms in the DoD Pilot Mentor-Protege Program. DoD expects this rule to have a beneficial impact on women-owned small business concerns, as participation in the Program provides protege firms an opportunity to enhance their capabilities and increase their participation as subcontractors. Presently, there are 3,471 women-owned small business concerns that do business with DoD. Since the inception of the Pilot Mentor-Protege Program, 160 mentor firms and 509 protege firms have participated in the Program.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001-D006.

C. Paperwork Reduction Act

The information collection requirements of the DoD Pilot Mentor-Protege Program have been approved by the Office of Management and Budget

under Control Number 0704-0332, for use through March 31, 2004.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). Section 807 adds women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program. Section 807 became effective upon enactment on October 30, 2000. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 219 and 252 and Appendix I to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 219 and 252 and Appendix I to Subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 219.7100 is revised to read as follows:

219.7100 Scope.

This subpart implements the Pilot Mentor-Protege Program established under Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2302 note). The purpose of the Program is to provide incentives for DoD contractors to assist protege firms in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

3. Section 219.7102 is amended by revising paragraph (b); and in paragraph (d)(2) by removing "SDB" and adding in its place "applicable". The revised text reads as follows:

219.7102 General.

* * * * *

(b) Protege firms that are—

- (1)(i) small disadvantaged business concerns as defined at 219.001(1);
- (ii) Business entities owned and controlled by an Indian tribe;

(iii) business entities owned and controlled by a Native Hawaiian Organization;

(iv) Qualified organizations employing the severely disabled; or

(v) Women-owned small business concerns;

(2) Eligible for receipt of Federal contracts; and

(3) Selected by the mentor firm.

* * * * *

219.7103-2 [Amended]

4. Section 219.7103-2 is amended in paragraph (c) by removing "small disadvantaged businesses" and adding in its place "protege firms".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.232-7005 is amended by revising the clause date and paragraph (a) introductory text to read as follows:

252.232-7005 Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program.

* * * * *

REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS—DOD PILOT MENTOR-PROTEGE PROGRAM (SEP 2001)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a protege firm, pursuant to an approved mentor-protege agreement, provided—

* * * * *

6. Appendix I to Chapter 2 is amended by revising Section I-100 to read as follows:

Appendix I—Policy and Procedures for the DoD Pilot Mentor-Protege Program

* * * * *

I-100 Purpose.

(a) This Appendix I to 48 CFR Chapter 2 implements the Pilot Mentor-Protege Program (hereinafter referred to as the "Program") established under Section 831 of Public Law 101-510, the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note). The purpose of the Program is to—

(1) Provide incentives to major DoD contractors, performing under at least one active approved subcontracting plan negotiated with DoD or another Federal agency, to assist protege firms in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements;

(2) Increase the overall participation of protege firms as subcontractors and suppliers under DoD contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protege firms and such contractors.

(b) Under the Program, eligible companies approved as mentor firms will enter into mentor-protege agreements with eligible protege firms to provide appropriate developmental assistance to enhance the capabilities of the protege firms to perform as subcontractors and suppliers. According to the law, DoD may provide the mentor firm with either cost reimbursement or credit against applicable subcontracting goals established under contracts with DoD or other Federal agencies.

(c) DoD will measure the overall success of the Program by the extent to which the Program results in—

(1) An increase in the dollar value of contract and subcontract awards to protege firms (under DoD contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the Program until 2 years after the conclusion of the agreement;

(2) An increase in the number and dollar value of subcontracts awarded to a protege firm (or former protege firm) by its mentor firm (or former mentor firm);

(3) An increase in subcontracting with small disadvantaged business (SDB) and women-owned small business (WOSB) concerns in industry categories where SDBs and WOSBs traditionally have not participated within the mentor firm's vendor base;

(4) The involvement of emerging SDB protege firms in the Program; and

(5) An increase in the employment level of protege firms from the date of entry into the Program until 2 years after the completion of the agreement.

(d) This policy sets forth the procedures for participation in the Program applicable to companies that are interested in receiving—

(1) Reimbursement through a separate contract line item in a DoD contract or a separate contract with DoD; or

(2) Credit toward applicable subcontracting goals for costs incurred under the Program.

7. Appendix I to Chapter 2 is amended by revising Section I-101.1 to read as follows:

I-101.1 Emerging SDB protege firm.

A small disadvantaged business whose size is no greater than 50 percent of the Small Business Administration (SBA) numerical size standard applicable to the North American Industry Classification System (NAICS) code for the supplies or services that the protege firm provides or would provide to the mentor firm.

I-102 [Amended]

8. Appendix I to Chapter 2 is amended in Section I-102 in paragraph (a) by removing "SDB" and adding in its place "applicable".

9. Appendix I to Chapter 2 is amended in Section I-103 by revising paragraph (c) to read as follows:

I-103 Program duration.

* * * * *

(c) From October 1, 1991, until September 30, 2005, a mentor firm may receive credit toward the attainment of its applicable subcontracting goals, for unreimbursed costs incurred in providing developmental assistance to its protege firms, only if such costs are incurred pursuant to an approved mentor-protege agreement.

10. Appendix I to Chapter 2 is amended by revising Section I-104 to read as follows:

I-104 Eligibility requirements for a protege firm.

(a) An entity may qualify as a protege firm if it is—

(1)(i) An SDB concern as defined at 219.001, paragraph (1) of the definition of "small disadvantaged business concern";

(ii) A business entity owned and controlled by an Indian tribe as defined in Section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13));

(iii) A business entity owned and controlled by a Native Hawaiian Organization as defined in Section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15));

(iv) A qualified organization employing the severely disabled as defined in Section 8064A of Public Law 102-172; or

(v) A small business concern owned and controlled by women, as defined in Section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D));

(2) Eligible for the award of Federal contracts; and

(3) A small business according to the SBA size standard for the NAICS code that represents the contemplated supplies or services to be provided by the protege firm to the mentor firm, if the firm is representing itself as a qualifying entity under paragraph (a)(1)(i) or (v) of this section.

(b) A protege firm may self-certify to a mentor firm that it meets the eligibility requirements in paragraph (a) of this section. Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraph (a) of this section, except for a protege's status as a small disadvantaged business concern (see FAR 19.703(b)).

(c) A protege firm may have only one active DoD mentor-protege agreement.

11. Appendix I to Chapter 2 is amended in Section I-105 as follows:

a. In paragraph (a) by revising the second sentence;

b. In paragraph (c) by removing the parenthetical "(1)"; and

c. By revising paragraph (e) to read as follows:

I-105 Selection of protege firms.

(a) * * * Mentor firms are encouraged to identify and select concerns that are defined as emerging SDB protege firms.

* * * * *

(e) If at any time pursuant to paragraph (c) of this section, the SBA determines that a protege firm is ineligible, assistance that the mentor firm furnishes to such a concern after the date of the determination may not be

considered assistance furnished under the Program.

I-106 [Amended]

12. Appendix I to Chapter 2 is amended in Section I-106 as follows:

a. In paragraph (a) in the first sentence by removing "SDB" and adding in its place "applicable";

b. In paragraph (b)(3) by removing "SDB" and adding in its place "small and disadvantaged business utilization";

c. In paragraph (b)(8) in the first sentence by adding, after "SDB", the phrase "and WOSB";

d. In paragraph (c)(1) by adding, after "SDBs", the phrase "and WOSBs";

e. In paragraph (c)(2)(iii) by removing "(1) or (2)"; and

f. In paragraph (e) in the first sentence by removing "SDB" and adding in its place "applicable".

13. Appendix I to Chapter 2 is amended in Section I-107 by revising paragraph (b)(2) and the last sentence of paragraph (f)(3) to read as follows:

I-107 Mentor-protege agreements.

* * * * *

(b) * * *

(2) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that, at the time the agreement is submitted for approval, the protege firm, if an SDB or WOSB concern, does not exceed the size standard for the appropriate NAICS code;

* * * * *

(f) * * *

(3) * * * Provision of progress payments by a mentor firm to a protege firm at a rate other than the customary rate for the firm must be implemented in accordance with FAR 32.504(c).

* * * * *

14. Appendix I to Chapter 2 is amended in Section I-108 by revising paragraph (c) to read as follows:

I-108 Reimbursement procedures.

* * * * *

(c) Assistance provided in the form of progress payments to a protege firm in excess of the customary progress payment rate for the firm will be reimbursed only if implemented in accordance with FAR 32.504(c).

* * * * *

15. Appendix I to Chapter 2 is amended in Section I-109 as follows:

a. By revising paragraph (a);

b. In paragraph (b) in the first sentence by removing "SDB" and adding in its place "applicable";

c. By revising paragraph (e) introductory text and paragraph (f);

d. In paragraph (g)(1) by removing "SDB";

e. In paragraph (h) introductory text by revising the first sentence;

f. In paragraph (h)(1) by removing "SDB" and adding in its place "small business"; and

g. In paragraph (m) by removing "SDB" and adding in its place "applicable". The revised text reads as follows:

I-109 Credit for unreimbursed developmental assistance costs.

(a) Developmental assistance costs incurred by a mentor firm for providing assistance to a protege firm pursuant to an approved mentor-protege agreement, that have not been reimbursed through a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, or through a separately priced contract line item added to a DoD contract, may be credited as if it were a subcontract award to that protege for determining the performance of the mentor firm in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219-9, Small Business Subcontracting Plan. Unreimbursed developmental assistance costs incurred for a protege firm that is a qualified organization employing the severely disabled may be credited toward the mentor firm's small disadvantaged business subcontracting goal, even if the protege firm is not a small disadvantaged business concern.

* * * * *

(e) A mentor firm may receive credit toward the attainment of an SDB subcontracting goal for each subcontract awarded for a product or a service by the mentor firm to an entity that qualifies as an SDB protege firm pursuant to I-104(a)(1)(i) through (iv). With respect to former SDB protege firm(s), a mentor may take credit for awards to such concern(s) that, except for its size would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

* * * * *

(f) Amounts credited toward applicable subcontracting goal(s) for unreimbursed costs under the Program must be separately identified from the amounts credited toward the goal resulting from the award of actual subcontracts to protege firms. The combination of the two must equal the mentor firm's overall accomplishment toward the applicable goal(s).

* * * * *

(h) The mentor firm must be afforded the opportunity to explain the decline in small business subcontract awards before imposition of any such limitation on credit.

* * * * *

* * * * *

I-111 [Amended]

16. Appendix I to Chapter 2 is amended in Section I-111 as follows:

a. In paragraph (a)(1) by removing "SDB" and adding in its place "applicable";

b. In paragraph (a)(2)(i) by removing "SDB subcontract" and adding in its place "applicable subcontracting";

c. In paragraph (a)(3)(i) by removing "SDB" and adding in its place "applicable subcontracting", and by removing the "a" before the word "protege"; and

d. In paragraph (c)(1) by removing "SDB" and adding in its place "applicable".

[FR Doc. 01-22423 Filed 9-10-01; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 226 and 252

[DFARS Case 2000-D024]

Defense Federal Acquisition Regulation Supplement; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8022 of the DoD Appropriations Act for Fiscal Year 2001. Section 8022 provides for incentive payments to DoD contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors.

DATES: Effective date: September 11, 2001.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 13, 2001, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2000-D024 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2000-D024.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.