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OCT 19 1984

Mr. Donald E. Sowle, Administrator  
Office of Federal Procurement Policy  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Sowle:

SUBJECT: Federal Acquisition Regulations System

This is in response to your July 17, 1984 request for the Nuclear Regulatory Commission's (NRC) formal procedures for reviewing our regulations and the status of our review.

Our NRC procurement regulations are currently in the development stage. The Division of Contracts (DC) has completed a preliminary review of the FAR to determine which areas may require implementing or supplementing agency regulations.

After appropriate internal review by affected offices, these regulations will be prepared by our DC and forwarded to an agency official for signature and transmittal to the Office of the Federal Register for publication.

The actual drafting will begin early in fiscal year 1985. It is anticipated that the development and internal review of our proposed acquisition regulations will be completed by the end of fiscal year 1985.

If you have any questions or should you require additional information, please contact Mr. Edward L. Halman, Director, Division of Contracts on 492-4347.

Sincerely,

Original Signed by  
Patricia Norry

Patricia G. Norry, Director  
Office of Administration

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL  
PROCUREMENT  
POLICY

JUL 17 1984

MEMORANDUM FOR AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM: Donald E. Sowle, Administrator *William E. Mathis*

SUBJECT: Federal Acquisition Regulations System

As you know, the Federal Acquisition Regulation (FAR) became effective on April 1, 1984. This is the keystone of the Federal Acquisition Regulations System. The fundamental purpose of the FAR is --

to eliminate conflicts, redundancies, and inconsistencies; provide users with a single set of simplified, uniform, government-wide acquisition regulations (containing common acquisition policies, procedures, solicitation provisions, contract clauses, and forms) that are well-written, easy to read, and organized logically; reduce excessive paperwork; make it easier to do business with the Federal Government; and facilitate agency, industry, and public participation in developing and maintaining the FAR and agency acquisition regulations.

Fifteen agencies have published in the Federal Register their acquisition regulations implementing and supplementing the FAR. I urge those agencies that have not yet published their regulations to do so soon. We must all focus our attention and efforts on ensuring that the System works as it was intended and that its integrity is maintained.

You are reminded that agency implementing and supplementing acquisition regulations must not conflict with, repeat, paraphrase, or otherwise restate the FAR or higher-level agency acquisition regulations, and must conform to the FAR numbering system. Agency acquisition regulations that govern the contracting process or otherwise control the relationship between the agency and contractors or prospective contractors must be published in Title 48. Agency regulations that do not govern the contracting process or do not otherwise control the relationship with contractors or subcontractors but are issued as internal agency guidance at any organizational level (e.g., designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements) need not be published in the Federal Register.

FAR Section 1.304, Agency control and compliance procedures, states that agencies shall control and limit issuance of agency acquisition regulations to assure compliance with FAR Part 1. Some of the controls available to minimize proliferation are: (a) internal agency management reviews, audits and Inspector General reviews; (b) regulatory review by OMB under Public Law 96-511; and (c)

public review and comment. Section 1.304 also requires agencies to evaluate all regulatory coverage in agency acquisition regulations to determine if the coverage could apply to other agencies. Coverage that is not peculiar to one agency must be recommended for FAR inclusion.

We have reviewed some of the published agency acquisition regulations implementing and supplementing the FAR. These reviews have revealed some problems, i.e., failure to follow the prescribed numbering system, subject structure and deviation requirements. We should all guard against these problems, otherwise the FAR and the FAR System will quickly become replete with inconsistency, nonuniformity, and redundancy. In short, it will conflict with its own fundamental purpose.

I ask that you complete as soon as possible the review of your agency regulations that implement and supplement the FAR. Attachment No. 1 extrapolates some useful information from FAR Part 1 and from FAR Subpart 52.1, that will help in this review. Please ensure that your regulations --

- Distinguish between implementing regulations and supplementing regulations (both in subject and numbering);
- Adhere to the FAR structured organization of subject matter;
- Comply with the FAR deviation requirements;
- Comply with the FAR-prescribed numbering system; and
- Are numbered the same in all versions (i.e., in the Federal Register and in looseleaf).

In addition, please advise me, by no later than October 15, 1984, of your agency's formal procedures for reviewing your regulations (FAR 1.304(a)), and the status of your review.

I appreciate your past efforts in bringing the FAR System into being. I solicit your continued cooperation.

Attachment

Attachment 1

Implementing regulations are those that cover internal procedures necessary to carry out the prescriptions in the FAR. Supplementing regulations are to cover the unique needs of the agencies on a subject not covered by the FAR.

The FAR authorizes agencies to issue regulations to implement FAR policies and procedures within the agencies.

FAR 1.301(a) states that an agency head may issue agency acquisition regulations that implement or supplement the FAR.

FAR 1.104-1 requires that each numbered unit or segment (e.g., part, subpart, section, etc.) of an agency regulation shall begin with the chapter number.

FAR 1.303(a) requires that coverage in an agency acquisition regulation that implements a specific part, subpart, section, or subsection of the FAR shall be numbered and titled to correspond to the appropriate FAR number and title.

(So, for example, the Department of Commerce is assigned chapter number 13 in Title 48. Its implementation of FAR 3.203 is numbered and titled 1303.203, Reporting suspected violations of the Gratuities clause).

The FAR also authorizes agencies to supplement the FAR when coverage is needed for subject matter not covered in the FAR (such as when additional policies, procedures, solicitation provisions or contract clauses are needed to satisfy agency needs).

FAR 1.303(a) requires that supplementary material for which there is no counterpart in the FAR shall be codified using chapter, part, subpart, section, or subsection numbers of 70 and up.

(For example, NASA is assigned chapter number 18 in Title 48. Its supplementation of FAR Part 3 consists of a NASA-unique subpart on a subject not covered in the FAR. Hence, this supplementation is numbered and titled Subpart 1803.70 — Contracts between NASA and Former NASA Employees (with ensuing sections numbered 1803.7001, 1803.7002, etc.).

FAR 52.101(b)(2) requires that supplemental provisions or clauses published in agency acquisition regulations shall be numbered in the same manner in which FAR provisions and clauses are numbered, except that the provision or clause number shall be preceded by the chapter number within 48 CFR.

FAR 52.101(b)(2) also requires that, within each section of Subpart 52.2 of the agency regulation, the subsections (or sequential numbers of the provisions and clauses) begin at "70" and continue on "71," etc.

(For example, NASA is assigned chapter number 18 in Title 48. Its supplementation of FAR Subpart 52.2 includes texts of provisions and clauses supplementing FAR parts 3 and 4. These provisions and clauses are numbered and titled as follows:

- 1852.203-70 Contracts Between NASA and Former NASA Employees.
- 1852.204-70 Report on NASA Subcontracts.
- 1852.204-71 NASA Financial Management Reporting.
- 1852.204-72 NASA Financial Management Reporting  
(Monthly Performance Reports)).

The FAR definition of "deviation" is quite explicit (see FAR 1.401). It covers FAR-prescribed policies and procedures, as well as clauses and provisions.

FAR 1.403 and 1.404 direct that copies of individual deviations and copies of class deviations shall be furnished to the FAR Secretariat.