

Council of Defense and Space Industry Associations

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July 17, 1998
CODSIA Case 6-98

Mr. Edward C. Loeb
General Services Administration
FAR Secretariat (MVRs)
1800 F Street, NW
Room 4035
Washington, DC 20405

Dear Mr. Loeb:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) appreciate the opportunity to provide comments on the proposed rule to remove or reduce certain requirements for representations or other statements from offerors and contractors (FAR Case 96-013). While we are supportive of the reduction or elimination of representations and other similar requirements from the contracting process, once again we are disappointed that the FAR Secretariat has not gone further in implementing the legislative goal of 4301 (b) of the Clinger-Cohen Act of 1996. Its goal was to eliminate the unnecessary and costly requirements of non-statutory certifications—and by extension, non-statutory representations and other similar statements. The legislative intent is not fulfilled as long as other declarative terms, which contain essentially the same meaning as a certification, are retained. The proposed rule is a good first step, but falls short of the legislative intent.

The following are our specific comments on the proposed rule:

52.219-21 Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program

The proposed rule deletes from the clause the phrase "Offeror represents as follows:" but does not change the title of the clause. We recommend that the clause title be modified to read "Small Business Size **Identification** for targeted..." (Emphasis added).

52.232-12 Advance Payments

Paragraph (o) is modified by the rule to delete "representations." It is recommended that paragraph (o) be titled "Acknowledgements" and that both "Representations and warranties" be deleted. The lead-in sentence would then read "The Contractor acknowledges the following." In addition, Item (8) under paragraph (o) should read "The acknowledgements of Items (1) through (7) shall be continuing..."

Typographical/Other Minor Items

- 27.409(g) In the first sentence, "sued" should read "used."
- 52.226-1(c)(1) In the proposed text, the subparagraph to (c) should be "(1)" instead of (c).
- 52.227-15 The prescription reference should read "27.409(g)" in lieu of "27.409(b)."
- 52.228-9 The proposed clause number of 52.227-9 is incorrect and should read 52.228-9.
- 52.228-9 In subparagraph (c)(2), the reference should be to subparagraph (c)(1).

The following additional changes are recommended to further eliminate representations:

52.215-4 Type of Business Organization (Oct 1997)

Since the purpose of the clause is to solicit information for the contracting officer's use, a representation seems more stringent than necessary. A simple requirement for the offeror or respondent to check the applicable box would suffice. We recommend the following rewording to the introductory statement of Clause 52.215-4:

"The offeror or respondent **shall indicate its business organization's status** by checking the applicable box." (Emphasis added).

52.222-22 Previous Contracts Compliance Reports (Apr 1984)

Since the requirement is for a statement of fact from the offeror, the clause could just as easily contain such a statement. A representation is not required for the validity of the offeror statement. We recommend that the clause be modified as follows:

"The offeror-

(a) () has, () has not, participated...

(b) () has, () has not filed...and

(c) **Proposed subcontractors shall submit required compliance reports and shall advise prospective prime contractor(s) before subcontract award.** (Emphasis added).

52.222-25 Affirmative Action Compliance (Apr 1984)

The prescriptive guidance contained in FAR 22.800 and subsequent does not indicate the requirement for a representation of compliance by the prospective contractor. We recommend that the representation be eliminated from clause 52.222-25 so that the offeror merely makes a statement:

"The offeror (a) () has developed..., or (b) () has not previously had..."

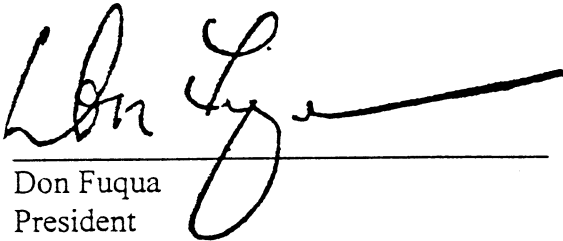
In a related matter, we note a recent decision by the General Accounting Office which suggests that the effort to reduce certifications could be undercut by actions of individual contracting officers. In Sea-Land Service, Inc., B-278404.2, slip op. At 16 (GAO, Feb 6, 1998), the Comptroller General stated that the provision of the Clinger-Cohen Act requiring an effort to remove non-statutory certification requirements from procurement regulations "does not prohibit the inclusion of non-statutory certifications in solicitations or contracts."

Obviously, it accomplishes little to remove non-statutory certifications from the FAR, only to have contracting officers place such certifications in particular solicitations or contracts. Accordingly, we recommend that you take this opportunity to include in the FAR a directive to contracting officers that such certifications are not to be included without senior-level approval. We suggest the following language:

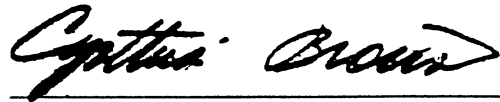
"The contracting officer shall not include a certification requirement (other than a certification requirement set out in the Federal Acquisition Regulation or an agency supplement) in a solicitation or contract without obtaining a written justification for such requirement from the senior procurement executive of the agency."

Thank you for this opportunity to provide comments on this very important proposed rule. If there are any questions or if we can be of further assistance, please contact the CODSIA Project Officer, Patrick Sullivan at (202) 371-8522.

Sincerely,



Don Fuqua
President
Aerospace Industries Association



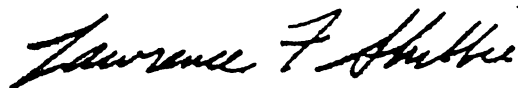
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