



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

NOV - 2 2001

MEMORANDUM FOR DIRECTOR, DEFENSE ACQUISITION REGULATION COUNCIL

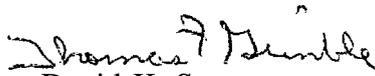
SUBJECT: Defense Federal Acquisition Regulation Supplement Case 2000-D028, Subcontract Commerciality Determinations

We reviewed the proposed rule to clarify the responsibilities regarding commercial item determinations for subcontracts. The revisions address (1) the responsibility of a contractor to determine whether a particular subcontract item meets the definition of "commercial item," and (2) the responsibility of an administrative contracting officer (ACO) to review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of "commercial item" in FAR 2.101.

We agree that the Defense Federal Acquisition Regulation Supplement (DFARS) should more clearly define the responsibilities of contractors and Administrative Contracting Officers (ACOs) regarding determinations as to whether a subcontract item meets the definition of a "commercial item." We generally agree with the proposed changes in the subject DFARS case. However, we believe that DFARS Subpart 244.3, Contractors' Purchasing Systems Reviews should be changed to include a new requirement. The ACO, when performing purchasing system reviews, needs to ascertain whether the contractor is requiring its subcontractors to provide any form of cost or pricing data before the contractor agrees to price or places orders.

The consent and advance notification requirements of FAR Subpart 44.2 are not applicable to prime contracts for commercial items acquired pursuant to FAR Part 12. Likewise, under FAR 44.303, a Contractor Purchasing Systems Review may not apply to subcontracts awarded exclusively in support of Government contracts for commercial items. Under those circumstances, the Government may have limited or no visibility over a prime contractor's use of subcontractors and whether the contractor's proposal will be a true commercial product. However, if the ACO establishes whether or not the prime contractor intends to obtain cost or pricing data for a planned subcontract, the ACO will obtain potentially valuable insight for a determination as to whether prime contractors are correctly adhering to the definition of a commercial item in response to the requirements of the proposed DFARS 244.303.

Thank you for the opportunity to comment on the proposed revisions. If you have any questions, please contact Mr. Eric D. Broderius at (703) 604-8755 or ebroderius@dodig.osd.mil.


David K. Steensma
Acting Assistant Inspector General
For Auditing