OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter on Subcontracting Plans for Companies Supplying Commercial Items

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: The Office of Federal Procurement Policy (OFPP) is requesting comments on a proposed policy letter on subcontracting plans for companies supplying commercial items.

SUMMARY: Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that each contract that exceeds \$500,000 (\$1 million in the case of construction), and that offers subcontracting opportunities, include a requirement that the apparent successful offeror negotiate a subcontracting plan which shall become a material part of the contract. These requirements have been implemented by prior OFPP Policy Letters and subsequent promulgation in the Federal Acquisition Regulation (FAR).

Sections 8104 and 8203 of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, establish a preference for the acquisition of commercial items. In establishing this preference, Congress expressed concern that implementing policies ease the burden of government-unique requirements for companies supplying commercial items. In response to this concern, the policy on subcontracting plans is being revised to reduce the burden of government-unique requirements on contractors that supply commercial items.

This proposed Policy Letter focuses on contracts and subcontracts for "commercial items" as defined in section 8001 of FASA. Annual, commercial company-wide, division-wide, or plant-wide, subcontracting plans that relate to a company's commercial and noncommercial production are authorized for:

- (a) Prime contracts for commercial items, or
- (b) Subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

In addition, the proposed Policy Letter states that commercial companywide plans, when authorized under the Policy Letter, shall be the preferred method of compliance with the requirements of section 8(d) of the Small Business Act. The policy letter reinforces that these provisions for subcontracting plans for commercial item contractors do not in any way relieve contracting officers, prime contractors or subcontractors of their responsibilities for assuring that small, small disadvantaged, and womenowned small businesses have the maximum practicable opportunity to participate in contracts awarded by Federal agencies.

COMMENT DATE: Comments must be received on or before April 10, 1995.

ADDRESSES: Comments should be submitted to William Coleman, Deputy Administrator, Office of Federal Procurement Policy, New Executive Office Building, Room 9013, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

FOR FURTHER INFORMATION CONTACT: William Coleman, Deputy Administrator, 202–395–3503.

Steven Kelman,

Administrator.

Policy Letter 95-

To The Heads of Executive Departments and Establishments

Subject: Subcontracting Plans for Companies Supplying Commercial Items

- 1. *Purpose.* The purpose of this Policy Letter is to establish policies on the requirement for subcontracting plans for companies supplying commercial items.
- 2. Authority. This Policy Letter is issued pursuant to section 6 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405.
- 3. Background. Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that each contract that exceeds \$500,000 (\$1 million in the case of construction), and that offers subcontracting opportunities, include a requirement that the apparent successful offeror negotiate a subcontracting plan which shall become a material part of the contract. The requirement for subcontracting plans does not apply to small businesses. The above requirements have been implemented by OFPP Policy Letter 80-2 "Regulatory Guidance on Section 211 of Public Law 95-507" dated April 29, 1980, and Supplement No. 1 dated May 29, 1981, and further implemented in part 19 of the Federal Acquisition Regulation (FAR). That Policy Letter specifically authorized the use of a company-wide annual subcontracting plan that relates to the contractor's commercial and noncommercial production when the government is acquiring a commercial product.

Sections 8104 and 8203 of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, establish a preference for the acquisition of commercial items by the Department of Defense and civilian agencies. In establishing this preference, Congress expressed concern that implementing policies ease the burden of government-unique requirements for companies supplying commercial items. The Conference Report (H.R. 103–712) recognizes the unique circumstance faced by

commercial contractors and the specific authority already provided in regulation and policy for company-wide plans rather than contract-by-contract plans.

The report cites OFPP Policy Letter 80–2, FAR 52.219–9(g), and 519.704(b) of the General Services Administration Acquisition Regulation which provide express authority for company-wide, division-wide or plantwide plans. The Report states:

Because contractors and subcontractors offering commercial items tend to rely on their existing network of suppliers rather than entering new subcontracts to fill government orders, the requirements applicable to the company-wide subcontracting plans of commercial companies differ from the requirements applicable to individual subcontracting plans of noncommercial companies. See e.g sections 519.704(c)(2), 519.705-5 and 519.705-6(b) of the GSA FAR Supplement. For example, a single company-wide plan authorized by these regulations is likely to address subcontracting opportunities at both the prime contract and subcontract levels obviating the need for the filing of individual contract-by-contract or subcontract-bysubcontract plans. Title VIII of the bill is not intended to require any changes to such practices." (emphasis added)

In response to this concern, the policy on subcontracting plans is being revised to reduce the burdens of government-unique requirements on contractors that supply commercial items.

- 4. Policy. The following policy applies to contracts and subcontracts for "commercial items" as defined in section 8001 of FASA. (1) It is a fundamental policy of the Federal Government that a fair proportion of its contracts be placed with small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women and that such businesses participate in subcontracting under government prime contracts.
- (2) When the requirements for a subcontracting plan under section 8(d) of the Small Business Act apply, annual, commercial company-wide, division-wide, or plant-wide subcontracting plans that relate to a company's commercial and noncommercial production are authorized for:
- (a) Prime contracts for commercial items, or
- (b) Subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.
- (3) Furthermore, it is the policy of the United States Government that commercial company-wide plans, when authorized under this Policy Letter, shall be the preferred method of compliance with the requirements of section 8(d) of the Small Business Act. In all solicitations expected to offer subcontracting opportunities which trigger the requirements for a subcontracting plan, the Government shall inform prospective offerors of the opportunity for themselves and/or their subcontractors to develop commercial company-wide plans if they are supplying commercial items. This would apply whether or not the prime contractor is supplying a commercial item.