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September 2, 2010

GENERAL MEMORANDUM 10-113

Federal Acquisition Regulatory Council to Hold Tribal Consultations on Sole-Source 8(a) Contracting on October 5, 7, and 19

The Federal Acquisition Regulatory (FAR) Council, in the attached August 31, 2010, FEDERAL REGISTER notice and August 30, 2010, Dear Tribal Leader Letter, announced that it is soliciting tribal input on the implementation of the new requirement that Federal agencies must justify sole-source contract awards over \$20 million. Additionally, a series of Tribal Consultation Sessions will be held in Washington, DC (October 5); Albuquerque, NM (October 7); and Fairbanks, AK (October 19).

The pre-registration form for "elected or appointed representatives of tribal communities" to attend the consultation sessions and detailed information about the selected locations is available at: <http://www.acq.osd.mil/dpap/dars/section811.html>

The recently enacted requirement that Federal agencies must justify and approve (J&A) and publish a notice of a sole-source contract award above \$20 million to an 8(a) business is set forth in Section 811 of the FY 2010 National Defense Authorization Act (NDAA), PL 111-84.

Tribes may submit written comments; send representatives to the consultation sessions; and in addition to participating in the sessions, may request to give formal oral presentations.

Please let us know if we may provide additional information or assistance in preparing comments for the consultation sessions.

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Inquires may be directed to:

Geoff Strommer (gstrommer@hobbsstrauss.com)

Elliott Milhollin (emilhollin@hobbsstrauss.com)

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technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. EPA Record Center, attn: Ms. Debbie Jourdan, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960, Phone: (404) 562-8862, hours 8 a.m.-4 p.m., Monday through Friday by appointment only; or, Thomas Public Library, 315 Martin Luther King, Jr. Drive, Fort Valley, GA 31030, Phone: 478-825-1640, hours 9 a.m.-6 p.m., Monday through Thursday, 9 a.m.-1 p.m. Friday, closed Saturday and Sunday.

FOR FURTHER INFORMATION CONTACT: Brian Farrier, Remedial Project Manager, Superfund Remedial Section C, Superfund Remedial Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Mr. Farrier can be reached via electronic mail at farrier.brian@epa.gov.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of Powersville Site Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, *see* the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: August 3, 2010

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010-21441 Filed 8-30-10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6 and 19

[**FAR Case 2009-038, Docket 2010-0095; Sequence 1**]

Federal Acquisition Regulation; Tribal Consultation; Justification and Approval of Sole-Source 8(a) Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of tribal consultation and outreach meetings and request for comments.

SUMMARY: The Federal Acquisition Regulatory Council (FAR Council) will hold tribal consultation and outreach meetings to discuss rulemaking associated with section 811 of the National Defense Authorization Act (NDAA) for FY 2010, Public Law 111-84. Section 811 addresses requirements for the justification and approval of sole-source contracts over \$20 million under the 8(a) small business development program. Presentations made during the meetings will be taken into consideration by the FAR Council as it develops changes to the Federal Acquisition Regulation (FAR) to implement section 811.

DATES: The meetings will be held during the month of October in Washington, DC, Albuquerque, NM, and Fairbanks,

AK. For more detailed information about the consultation registration procedures, dates, location, times, and agendas, please see <http://www.acq.osd.mil/dpap/dars/section811.html>.

FOR FURTHER INFORMATION CONTACT: For questions about registration, the submission of comments, or for clarification of the subject matter of the consultation and outreach, submit them to the e-mail address identified at <http://www.acq.osd.mil/dpap/dars/section811.html>. Please put "Consultation Questions" in the subject line of the e-mail.

SUPPLEMENTARY INFORMATION:

A. Additional Information

Procedures for the consultation and outreach: The FAR Council respectfully requests that any elected or appointed representatives of the tribal communities that are interested in attending the consultation and outreach meeting preregister and indicate whether they would like to make a presentation during the meeting. Registration is on a first-come first-served basis. To pre-register, please go to <http://www.acq.osd.mil/dpap/dars/section811.html> and send an e-mail to the address identified on the site with your name, organization affiliation, address, telephone number, e-mail address, and fax number, and indicate which consultation and outreach session you are interested in attending. Please put "Consultation Registration" in the subject line of the e-mail.

Formal oral presentations: The purpose of these consultations and outreach is to encourage meaningful dialogue with tribal officials regarding the development of federal acquisition policy when implementing section 811 of the NDAA 2010. In addition, participants interested in making formal oral presentations during the meeting should provide the following information by the preregistration deadline stated on <http://www.acq.osd.mil/dpap/dars/section811.html>: Name, organization affiliation, address, telephone number, e-mail address, and fax number. Based on the number of registrants requesting time for presentations, the FAR Council may ask participants to limit the length of their formal presentations so that all attendees wishing to speak have the opportunity to be heard and there is adequate time for discussion.

Written comments: The FAR Council welcomes written statements from attendees making formal oral presentations, other attendees, and members of the tribal communities who

are unable to attend the meeting but wish to share their views on the development of regulations to implement section 811. Written comments may be submitted to the e-mail address identified at <http://www.acq.osd.mil/dpap/dars/section811.html>. Please provide your name, organization affiliation, address, telephone number, e-mail address, and fax number. Please put "Consultation Comments" in the subject line of the e-mail. Parties wishing to have their written comments shared at the meeting should ensure comments are received by the deadlines stated on Web site.

Meeting accommodations: The meeting is physically accessible to persons with disabilities. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Special Assistance Contact via the telephone number or e-mail address listed on <http://www.acq.osd.mil/dpap/dars/section811.html>.

B. Background

Section 811 of the FY 2010 NDAA establishes a new requirement for Federal agencies to justify a sole-source contract award to a business under the Small Business Administration's 8(a) business development program, including businesses owned by Indian Tribes and Alaska Native Corporations, if the sole-source award is to exceed \$20 million. The 8(a) program enables contract awards to be made to socially and economically disadvantaged small business concerns using the Small Business Administration (SBA) as the prime contractor to the requiring agency.

Section 811 states that a sole-source justification must include the following information: (1) A description of the needs of the agency concerned for the matters covered by the contract, (2) a specification of the statutory provision providing the exception from the requirement to use competitive

procedures in entering into the contract, (3) a determination that the use of a sole-source contract is in the best interest of the agency concerned, (4) a determination that the anticipated cost of the contract will be fair and reasonable, and (5) such other matters as the head of the agency concerned shall specify. Before an award can be made, the justification must be approved by an appropriate official, as specified in statute. Section 811 does not require a justification and approval (J&A) if the contract award is equal to or less than \$20 million. Similar to the handling of J&As for other sole-source awards, J&As prepared pursuant to section 811 must be made public within 14 days after contract award is made. Finally, section 811 requires that the FAR—the government-wide regulation governing the Federal acquisition process—be revised to reflect its revisions.

The FAR Council is responsible for overseeing the development and maintenance of the FAR, including changes to implement section 811. Its members include the Administrator for Federal Procurement Policy, who serves as the chair of the Council and is a senior official in the Office of Management and Budget, and senior acquisition officials from the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration.

The FAR Council believes the conduct of tribal consultation and outreach in connection with section 811 will be a valuable component of its deliberations in preparing to implement this law, which includes contracting with Indian Tribes and Alaska Native Corporations. As explained in E.O. 13175, Tribal consultation is a critical component of a sound and productive Federal-Tribal relationship. The President's Memorandum of November 5, 2009 underscores this Administration's commitment to regular and meaningful consultation with tribal officials in policy decisions that have

tribal implications. The FAR Council seeks tribal consultation and outreach in connection with section 811 to allow for constructive dialogue and an opportunity for the FAR Council to hear the views of the tribal community, Tribal Leaders, Elders and elected members of Alaska Native Villages or their appointed representatives on how this law may affect the ability of Indian Tribes and Alaska Native Corporations to receive Federal contracts under the 8(a) Program. Officials from the Small Business Administration will also participate in the consultation and outreach.

Attendees who plan to make oral presentations during the meeting are also encouraged to provide a written copy of their statements and any supplementary material they believe is relevant and will assist the FAR Council in its deliberations. Electronic or digitized copies are especially welcomed. FAR Council members or other officials representing the FAR Council may ask questions of individuals making formal oral presentations during the meeting to clarify or further explain their statements. The FAR Council will analyze the presentations, both oral and written, along with any written comments received. Following consultation and outreach and analysis of comments from the tribal community, the FAR Council will prepare a rule for review by the Office of Management and Budget pursuant to Executive Order 12866, *Regulatory Planning and Review*. Members of the public at large, as well as tribal officials, will have the opportunity to provide written comments on FAR changes to implement section 811, which will be considered by the FAR Council, before a final rule is promulgated.

Dated: August 26, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010-21743 Filed 8-30-10; 8:45 am]

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

OFFICE OF FEDERAL
PROCUREMENT POLICY

August 30, 2010

Dear Tribal Leader:

On behalf of the Federal Acquisition Regulatory Council (FAR Council), I write to solicit your views as we develop regulations, pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84) establishes a new requirement for Federal agencies to justify a sole-source contract award to a business under the Small Business Administration's 8(a) business development program, including businesses owned by Indian Tribes and Alaska Native Corporations, if the sole-source award is to exceed \$20 million.

Section 811 requires that regulatory actions be taken to implement this provision in the Federal Acquisition Regulation (FAR) – the government-wide regulation governing the Federal acquisition process. The FAR is overseen by the FAR Council, whose members include the Administrator for Federal Procurement Policy, who serves as the chair of the Council and is a senior official in the Office of Management and Budget, and the Senior Procurement Executives from the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration.

The FAR Council believes that tribal consultation and outreach in connection with Section 811 will be a valuable component of its deliberations in preparing to implement this law. The FAR Council looks forward to constructive dialogue on how this law may affect the ability of Indian Tribes and Alaska Native Corporations to receive Federal contracts under the 8(a) Program. Officials from the Small Business Administration will also participate in the consultation.

The tribal consultation meetings will be held during the month of October in Fairbanks, Alaska, Albuquerque, New Mexico, and Washington, D.C. We have set up a website, www.acq.osd.mil/dpap/dars/section811.html, where more detailed information about the consultations registration procedures, dates, location, times, and agendas will be posted.

In order to give maximum consideration to tribal comments, we encourage you to participate in the consultation meetings. We hope to encourage your comment through dialogue but also welcome presentations during the consultation meeting and written comments in addition to, or in place of, your attendance at the meetings. This information will be taken into consideration by the FAR Council as it develops changes to the FAR to implement section 811. If you are interested in making a short formal presentation, please indicate this request when you register so that we may schedule time accordingly. If you wish to share a handout to accompany an oral statement, or provide written comments, please submit them in accordance with the

instructions provided on the website identified in the preceding paragraph so the materials may be downloaded by other attendees and interested parties.

I look forward to your participation in the upcoming meetings.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Gordon', with a long horizontal flourish extending to the right.

Daniel I. Gordon
Administrator