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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Corrigan, Channel 232A, and by adding Channel 261A at Lufkin.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99-20390 Filed 8-6-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF DEFENSE

48 CFR Parts 202 and 217

[DFARS Case 97-D308]

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update guidance pertaining to multiyear contracting. The rule contains statutory requirements related to the award of multiyear contracts for supplies, services, and weapon systems. **EFFECTIVE DATE:** August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-4245; telefax (703) 602-0350. Please cite DFARS Case 97-D308.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Subpart 217.1 to update guidance

pertaining to the award of multiyear contracts. The rule adds requirements to reflect the provisions of 10 U.S.C. 2306(g)(2)(B), 10 U.S.C. 2306b(i)(3), and Section 8008(b) of Public Law 105-56; updates other statutory references throughout the subpart; and makes editorial revisions for clarity. In addition, the rule adds a definition of "Congressional defense committees" at DFARS 202.101.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97-D308.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 202 and 217

Government procurement.

Michele P. Peterson,

Executive Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 202 and 217 are amended as follows:

1. The authority citation for 48 CFR Parts 202 and 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

2. Section 202.101 is amended by adding, in alphabetical order, a definition of "Congressional defense committees" to read as follows:

§ 202.101 Definitions

"Congressional defense committees" means—

- (1) The Committee on Armed Services of the Senate;
- (2) The Subcommittee on Defense of the Committee on Appropriations of the Senate;
- (3) The Committee on Armed Services of the House of Representatives; and

(4) The Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

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PART 217—SPECIAL CONTRACTING METHODS

3. Sections 217.170 through 217.714 are revised to read as follows:

217.170 General

(a) Before awarding a multiyear contract, the head of the agency must compare the cost of that contract to the cost of an annual procurement approach, using a present value analysis. Do not award the multiyear contract unless the analysis shows that the multiyear contract will result in the lower cost (10 U.S.C. 2306(1)(5)).

(b) The head of the agency must provide written notice to the congressional defense committees at least 10 days before termination of any multiyear contract (10 U.S.C. 2306(1)(4)).

(c) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

(d) Every multiyear contract must comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant comptroller.

(e)(1) DoD must receive authorization from, or provide notification to, Congress before entering into a multiyear contract for certain procurements, including those expected to—

(i) Exceed \$500 million for any particular system or system component (see 217.173(b)(4));

(ii) Employ economic order quantity procurement in excess of \$20 million in any one year (see 217.174(a)(1));

(iii) Employ an unfunded contingent liability in excess of \$20 million (see 217.172(c)); or

(iv) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (see 217.174(a)(2)).

(2) A DoD component must submit a request for authority to enter into such multiyear contracts as part of the component's budget submission for the fiscal year in which the multiyear contract will be initiated. DoD will include the request, for each candidate it supports, as part of the President's Budget for that year and in the

Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (Section 8008(b) of Pub. L. 105-56).

(3) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements in paragraph (e)(2) of this section, the request for authority to enter into a multiyear contract must be—

- (i) Formally submitted by the President as a budget amendment; or
- (ii) Made by the Secretary of Defense, in writing, to the congressional defense committees (Section 8008(b) of Pub. L. 105-56).

217.171 Multiyear contracts for services.

(a) *10 U.S.C. 2306(g).*

(1) The head of the agency may enter into multiyear contracts for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated:

- (i) Operation, maintenance, and support of facilities and installations.
- (ii) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.
- (iii) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training).
- (iv) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(2) The head of the agency may use this authority only if the term of the contract does not exceed 5 years. However, the head of the agency may extend the term of the contract by exercising an option that does not—

- (i) Exceed 3 years; or
- (ii) Include charges for plant, equipment, or other nonrecurring costs already amortized.

(3) Before entering into a multiyear contract for services, the head of the agency must make a written determination that—

- (i) There will be a continuing need for the services and incidental supplies consistent with current plans for the proposed contract period;
- (ii) Furnishing the services and incidental supplies will require—
 - (A) A substantial initial investment in plant or equipment; or
 - (B) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and
- (iii) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business

operations (e.g., economic lot purchases and more efficient production rates).

(b) *10 U.S.C. 2829.*

(1) The head of the agency may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year.

(2) The head of the agency may use this authority only if the term of the contract does not exceed 4 years.

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.173.

(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105-1(b), the use of such a contract will promote the national security of the United States.

(c) The head of the agency must provide written notice to the congressional defense committees at least 30 days before the contracting officer awards a multiyear contract including an unfunded contingent liability in excess of \$20 million (10 U.S.C. 2306b(l)(1)(A)).

(d) Agencies must establish reporting procedures to meet the requirements of paragraph (c) of this section. The head of the agency must submit copies of the notifications to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)DP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

217.173 Multiyear contracts for weapon systems.

(a) As authorized by 10 U.S.C. 2306b(h) and subject to the conditions in paragraph (b) of this section, the head of the agency may enter into a multiyear contract for—

- (1) A weapon system and associated items, services, and logistics support for a weapon system; and
- (2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see 217.174 regarding economic order quantity procurement).

(b) The head of the agency must ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (a) of this section:

(1) The multiyear exhibits required by DoD 7000.14-R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress that the current 5-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A)). The head of the agency must submit information supporting this certification to USD(C) (P/B) for transmission to Congress through the Secretary of Defense.

(3) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B)). The head of the agency must submit to USD(C) (P/B) information supporting the agency's determination that this requirement has been met.

(4) If the value of a multiyear contract for a particular system or component exceeds \$500 million, use of a multiyear contract is specifically authorized by—

- (i) An appropriations act (10 U.S.C. 2306b(l)(3)); and
- (ii) A law other than an appropriations act (10 U.S.C. 2306b(i)(3)).

(5) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (10 U.S.C. 2306b(i)(2)). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency must assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request must—

- (i) Quantify the savings that can be achieved;
- (ii) Explain any other benefits to the Government of using the multiyear contract;
- (iii) Include details regarding the negotiated contract terms and conditions; and
- (iv) Be submitted to OUSD (A&T) DP for transmission to Congress via the Secretary of Defense and the President.

217.174 Multiyear contracts that employ economic order quantity procurement.

(a) The head of the agency must provide written notice to the congressional defense committees at least 30 days before awarding—

(1) A multiyear contract providing for economic order quantity procurement in excess of \$20 million in any one year; or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (10 U.S.C. 2306b(l)(1)(A)).

(b) Before initiating an advance procurement, the contracting officer must verify that it is consistent with DoD policy (e.g., Part 3 of DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, and the full funding policy in Volume 2A, Chapter 1, of DoD 7000.14-R, Financial Management Regulation).

[FR Doc. 99-20284 Filed 8-6-99; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 212, 213, 252, and 253

[DFARS Case 98-D027]

Defense Federal Acquisition Regulation Supplement; Taxpayer Identification Numbers and Commercial and Government Entity Codes

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add procedures for reporting payment information to the Internal Revenue Service (IRS); to revise the procedures for obtaining Taxpayer Identification Numbers (TINs) and Commercial and Government Entity (CAGE) codes when contractors are required to register in the Central Contractor Registration (CCR) database; and to make editorial changes.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; telefax (703) 602-0350. Please cite DFARS Case 98-D027.

SUPPLEMENTARY INFORMATION:

A. Background

1. *Reporting payment information to the IRS.* This rule supplements the final

FAR rule published as Item I of Federal Acquisition Circular 97-12 on June 17, 1999 (64 FR 32741).

a. The FAR rule renumbered and retitled FAR 4.903, Payment information, as FAR 4.904, Reporting payment information to the IRS; and deleted the list, previously located at FAR 4.903(b), of the types of payments that are exempt from reporting payment information to the IRS on Form 1099. The list was considered unnecessary for including in the FAR, because the payment office is responsible for submitting Form 1099 reports to the IRS.

b. This rule adds a new section at DFARS 204.904, Reporting payment information to the IRS. The new section contains a list that is similar to the one previously found in the FAR, but the list has been updated to comply with the Taxpayer Relief Act of 1997 (Pub. L. 105-32). Section 1022 of the Act amended 26 U.S.C. 6041A to add payments under certain classified contracts to the list of exceptions, and to remove payments for services provided by corporations from the list. DFARS 204.904 also adds a requirement for the contracting officer to provide a statement to the payment office if the contractor is providing services subject to Form 1099 reporting to the IRS. The statement is not required if the contracting officer concludes that one of the exceptions listed at DFARS 204.904(1) applies. This procedure is added to the DFARS to facilitate issuance of Form 1099 reports by the payment office.

2. *Procedures for obtaining TINs and CAGE code numbers when CCR applies.* The FAR rule also modified the process for obtaining TINs, by permitting agencies to prescribe their own procedures for obtaining TINs from contractors and for providing the TINs to the payment office. DoD uses the CCR database for these purposes. This DFARS rule clarifies that the contracting officer must not use the solicitation provisions at FAR 52.204-3, Taxpayer Identification, and DFARS 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting; or paragraph (b) of the provision at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, when the contractor is required to register in the CCR database, since the information that these provisions request is duplicative of the information that the contractor must provide during the CCR process.

3. *Editorial changes.* This DFARS rule makes a number of editorial changes, including updating CAGE code

information in Subpart 204.72, Contractor Identification, and clarifying certain requirements in Subpart 204.73, Central Contractor Registration.

4. *Proposed rule.* A proposed DFARS rule was published in the **Federal Register** on January 15, 1999 (64 FR 2617). Three sources submitted comments on the proposed rule. All comments were considered in the development of the final rule.

5. This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the FAR and DFARS already contain requirements for offerors and contractors to provide TINs and CAGE codes and to register in the CCR database. This rule simply clarifies that, if a prospective contractor is required to register in the CCR database, it does not have to provide a TIN or a CAGE code to the contracting officer.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) applies because the rule contains information collection requirements. The final rule decreases the collection requirements currently approved under Office of Management and Budget Control Number 0704-0225, since the rule limits use of the solicitation provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting, to contractors that are not required to register in the CCR database. Therefore, the final rule reduces the number of respondents by 89,545, and the number of burden hours by 22,386.

List of Subjects in 48 CFR Parts 204, 212, 213, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 204, 212, 213, 252, and 253 are amended as follows:

1. The authority citation for 48 CFR parts 204, 212, 213, 252, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.203 is added to read as follows: