

DEPARTMENT OF DEFENSE**48 CFR Part 219****Defense Federal Acquisition Regulation Supplement; Evaluation Preference for Small Disadvantaged Business Concerns**

AGENCY: Department of Defense.

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement to state that the evaluation preference for small disadvantaged business concerns shall not be used in acquisitions for long distance telecommunications services.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 3, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D008 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:**A. Background**

Subpart 219.70 of the Defense Federal Acquisition Regulation Supplement (DFARS) provides policy and procedures for use of an evaluation preference for offers from small disadvantaged business (SDB) concerns in competitive acquisitions. SDB concerns receiving the evaluation preference in acquisitions for services must agree that at least 50 percent of the cost of personnel for contract performance will be spent for employees of the SDB concern.

This DFARS rule proposes to make the SDB evaluation preference inapplicable to acquisitions for long distance telecommunications services, as it is often necessary for large long distance carriers to provide more than 50 percent of the labor under contracts for long distance telecommunications services.

B. Regulatory Flexibility Act

The proposed change to DFARS Part 219 may 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 rule eliminates the evaluation preference for small disadvantaged business concerns in acquisitions for long distance telecommunications services. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address stated herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D008 in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 219 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 219 continues to read as follows:

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

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2. Section 219.7001(b) is revised to read as follows:

219.7001 Applicability.

* * * * *

(b) Do not use the evaluation preference in acquisitions which—

- (1) Use small purchase procedures;
- (2) Are set-aside for small disadvantaged businesses;
- (3) Are set-aside for small businesses;
- (4) Are for commissary or exchange resale; or
- (5) Are for long distance telecommunications services.

[FR Doc. 95-11020 Filed 5-3-95; 8:45 am]

BILLING CODE 5000-04-M

INTERSTATE COMMERCE COMMISSION**49 CFR Part 1121**

[Ex Parte No. 400 (Sub-No. 4)]

New Procedures in Rail Exemption Revocation Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is requesting comments on a proposal by the Railway Labor Executives' Association and its affiliated labor organizations to establish procedural rules to govern the filing and processing of petitions to revoke exemptions.

DATES: Written comments are due on June 19, 1995.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. 400 (Sub-No. 4), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: By petition filed December 30, 1994, the Railway Labor Executives' Association and its affiliated labor organizations (RLEA)¹ ask that we establish formal procedural rules to govern petitions to revoke exemptions brought under 49 U.S.C. 10505(d) or 49 CFR 1152.25(e). RLEA proposes a set of rules which, it asserts, provides the parties and the Commission with a specific procedure for filing and processing petitions to revoke exemptions. These rules would require, among other things, that a petition to revoke be filed to initiate a proceeding, containing a concise, plain statement of the grounds for revocation, as well as the relief sought. The rules would further require that respondent(s) reply within 15 days, setting forth, among other things, a concise, plain statement of the reasons why the petition should not be granted. Discovery would commence with the

¹ The affiliated organizations include: American Train Dispatchers Department; International Brotherhood of Locomotive Engineers; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees International Union; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen and Oilers; and Sheet Metal Workers' International Association.

filing of the reply or upon expiration of 15 days after the filing of the petition to revoke (whichever is shorter), and would close within 105 days. Parties could proceed with depositions only by filing a petition with the Commission. All discovery and scheduling matters would be handled by an Administrative Law Judge. RLEA's proposed regulations also allow for the filing of briefs by petitioner and respondent and set a staggered schedule.² Finally, the proposed procedural schedule calls for

² Petitioner's brief would be due 30 days after the close of discovery, or if there is no discovery, 15 days after the filing of the reply. Respondent's brief would be due 30 days after service of petitioner's brief or within 15 days if there is no discovery. Petitioner would be permitted to file a reply brief (not to exceed 10 pages) within 10 days after service of the opposition brief.

a Commission decision to be issued within 45 days from the filing of the reply brief, if there has been discovery, or within 30 days, if there has been no discovery.

We are now seeking public comments on this proposal by RLEA to amend 49 CFR 1121.4(i) to provide formal procedural rules for the filing and processing of a revocation petition.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we need not make, at this time, the small business impact examination required by that

Act. Nevertheless, we welcome any comments regarding the small entities considerations embodied in that Act. If we decide to issue a notice of proposed rulemaking, we will conduct an appropriate Regulatory Flexibility Act examination at that time.

List of Subjects in 49 CFR Part 1121

Rail exemption procedures.

Authority: 49 U.S.C. 10326, 10505 and 5 U.S.C. 553.

Decided: April 27, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,
Secretary.

[FR Doc. 95-11011 Filed 5-3-95; 8:45 am]

BILLING CODE 7035-01-P