

3. A new subpart F, consisting of §§ 162.600, 162.605 and 162.610, is added to read as follows:

Subpart F—Standard Unique Employer Identifier

Sec.

162.600 Compliance dates of the implementation of the standard unique employer identifier.

162.605 Standard unique employer identifier.

162.610 Implementation specifications for covered entities.

Subpart F—Standard Unique Employer Identifier

§ 162.600 Compliance dates of the implementation of the standard unique employer identifier.

(a) *Health care providers.* Health care providers must comply with the requirements of this subpart no later than July 30, 2004.

(b) *Health plans.* A health plan must comply with the requirements of this subpart no later than one of the following dates:

(1) *Health plans other than small health plans*— July 30, 2004.

(2) *Small health plans*— August 1, 2005.

(c) *Health care clearinghouses.* Health care clearinghouses must comply with the requirements of this subpart no later than July 30, 2004.

§ 162.605 Standard unique employer identifier.

The Secretary adopts the EIN as the standard unique employer identifier provided for by 42 U.S.C. 1320d-2(b).

§ 162.610 Implementation specifications for covered entities.

(a) The standard unique employer identifier of an employer of a particular employee is the EIN that appears on that employee's IRS Form W-2, Wage and Tax Statement, from the employer.

(b) A covered entity must use the standard unique employer identifier (EIN) of the appropriate employer in standard transactions that require an employer identifier to identify a person or entity as an employer, including where situationally required.

Subparts G Through H—[Reserved]

4. Subparts G through H are reserved.

Dated: March 20, 2002.

Tommy G. Thompson
Secretary.

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DEPARTMENT OF DEFENSE

48 CFR Parts 213, 247, and 252

[DFARS Case 2000-D014]

Defense Federal Acquisition Regulation Supplement; Ocean Transportation by U.S.-Flag Vessels

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that requirements for use of U.S.-flag vessels, in the transportation of supplies by sea, apply to contracts at or below the simplified acquisition threshold as well as those that exceed the simplified acquisition threshold.

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.247-7023, Transportation of Supplies by Sea, contains requirements for use of U.S.-flag vessels when transporting supplies by sea under a DoD contract. The clause requires a contractor to (1) submit any request for use of other than U.S.-flag vessels in writing to the contracting officer;

(2) provide a copy of the bill of lading to the contracting officer and the Maritime Administration after each shipment of supplies by sea; (3) provide with the final invoice a representation as to whether ocean transportation and U.S.-flag vessels were used in performance of the contract; and (4) include the clause in subcontracts for construction supplies, noncommercial items, and certain commercial items.

Prior to this rule, the DFARS exempted contracts and subcontracts at or below the simplified acquisition threshold from use of the clause at DFARS 252.247-7023. In accordance with 10 U.S.C. 2631, Supplies: Preference to United States Vessels, this rule eliminates the exemption. However, the rule prescribes an alternate version of the clause for contracts and subcontracts at or below the simplified acquisition threshold. The alternate version excludes the requirement for a contractor or subcontractor to provide a representation regarding ocean transportation with its final invoice.

DoD published a proposed rule at 66 FR 47153 on September 11, 2001. Five sources submitted comments on the

proposed rule. A summary of the comments and the DoD response is provided below:

Comment: The rule is contrary to Section 4101 of the Federal Acquisition Streamlining Act of 1994 (FASA) (Public Law 103-355; 41 U.S.C. 429), which requires the Federal Acquisition Regulation (FAR) to include 10 U.S.C. 2631 in a list of laws that are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold unless the Federal Acquisition Regulatory Council makes a written determination that it would not be in the best interest of the Federal Government to exempt such contracts and subcontracts.

DoD Response: The list of laws referred to by the respondent applies to laws enacted after FASA. 10 U.S.C. 2631 has been in existence since 1904. There is no statutory authority to exempt 10 U.S.C. 2631 for contracts or subcontracts at or below the simplified acquisition threshold. In addition, the policy in this DFARS rule is consistent with the FAR rule published at 65 FR 24324 on April 25, 2000, which applies the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures.

Comment: The rule is contrary to Section 4201(a) of FASA (41 U.S.C. 427(a)), which requires that the FAR provide special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold. Compliance with 10 U.S.C. 2631 for such purchases of property would impose unreasonable administrative burdens on affected contractors and subcontractors.

DoD Response: The rule is consistent with the provisions of 41 U.S.C. 427 in that it seeks to avoid overly burdensome reporting requirements for acquisitions at or below the simplified acquisition threshold. The rule does not require use of the provision at DFARS 252.247-7022, Representation of Extent of Transportation by Sea, or the clause at DFARS 252.247-7024, Notification of Transportation of Supplies by Sea, in acquisitions at or below the simplified acquisition threshold. Additionally, the rule limits the requirements of the clause at DFARS 252.247-7023, Transportation of Supplies by Sea, in contracts and subcontracts at or below the simplified acquisition threshold by excluding from those contracts and subcontracts the requirement for a contractor or subcontractor to provide a representation regarding ocean transportation with its final invoice.

Comment: DFARS 247.573(a)(2) exempts solicitations valued at or below

the simplified acquisition threshold from the requirement for offerors to represent whether or not ocean transportation will be used in performance of the contract. This representation (252.247-7022) helps to ensure that an offeror is cognizant of requirements for use of U.S.-flag vessels and that the contracting officer is aware of requirements for ocean transportation. Elimination of this representation is likely to increase incidents of non-compliance with Cargo Preference laws and adversely impact the U.S.-flag merchant marine. In addition, the new Alternate III for the clause at 252.247-7023, Transportation of Supplies by Sea, eliminates the following requirements for contracts and subcontracts at or below the simplified acquisition threshold: (1) The requirement for a contractor to provide a representation regarding ocean transportation with its final invoice; (2) The requirement for the Government to reject and return an invoice that does not contain the required representation; and (3) The right of the Government to equitably adjust the contract for unauthorized use of non-U.S.-flag vessels. Elimination of these requirements diminishes the ability of the contracting officer to monitor and enforce compliance with Cargo Preference laws.

DoD Response: Due to the increased potential for use of ocean transportation in contracts exceeding the simplified acquisition threshold, the DFARS requires contractors to provide multiple representations and requires contracting officers to determine whether ocean transportation will be required during the solicitation phase of an acquisition. These actions ensure that the contracting officer has the information needed to perform the appropriate level of oversight for high dollar value acquisitions. Since only a very limited number of procurements at or below the simplified acquisition threshold will require ocean transportation, the type of representations required above the simplified acquisition threshold would create an unnecessary burden on the majority of contractors receiving contracts at or below the threshold. Therefore, DoD believes that the costs of enforcing these requirements in contracts with an anticipated value at or below the simplified acquisition threshold would far outweigh the benefits and would be contrary to the provisions of 41 U.S.C. 427. DoD believes that the rule is an appropriate balance between the need to enforce the Cargo Preference laws and the need to impose minimal burden on contractors

and subcontractors (many small businesses) when the value of the contract or subcontract does not exceed the simplified acquisition threshold.

Comment: The rule removes DFARS 247.572-1(c), which (1) requires the contracting officer to ask each offeror if it will transport supplies by sea, (2) requires a contractor that did not anticipate transportation of supplies by sea when it submitted its offer to notify the Government if it later intends to use ocean transportation, and (3) requires the contractor to use U.S.-flag vessels in the transportation of supplies by sea and comply with other requirements of the clause at 252.247-7023, Transportation of Supplies by Sea. Elimination of these requirements will decrease Government oversight and will allow offerors and contractors to circumvent the requirements of the Cargo Preference laws.

DoD Response: The DFARS still contains these requirements. The text at DFARS 247.572-1(c) was removed because it was redundant of the policy found at DFARS 247.571(a), 247.573(a), 252.247-7022, 252.247-7023, and 252.247-7024.

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 most entities that provide ocean transportation of freight are not small businesses, and the rule minimizes the information required from offerors and contractors for acquisitions valued at or below the simplified acquisition threshold.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. This rule increases the number of contractors subject to the information collection requirements in paragraphs (d) and (e) of the clause at DFARS 252.247-7023. DoD estimates that this change will increase paperwork burden by approximately 240 hours. The Office of Management and Budget (OMB) has approved this information collection for use through July 31, 2004, under OMB Control Number 0704-0245.

List of Subjects in 48 CFR Parts 213, 247, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 213, 247, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 213, 247, and 252 continues to read as follows:

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.301 is amended in paragraph (2)(i)(E) by removing the word “and”, and by adding paragraph (2)(i)(G) to read as follows:

213.301 Governmentwide commercial purchase card.

* * * * *

(2) * * *

(i) * * *

(G) Does not require transportation of supplies by sea; and

* * * * *

PART 247—TRANSPORTATION

247.572-1 [Amended]

3. Section 247.572-1 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

4. Section 247.573 is amended by revising paragraph (b)(1) and adding paragraph (b)(4) to read as follows:

247.573 Solicitation provision and contract clauses.

* * * * *

(b)(1) Use the clause at 252.247-7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, except those for direct purchase of ocean transportation services.

* * * * *

(4) Use the clause with its Alternate III in solicitations and contracts with an anticipated value at or below the simplified acquisition threshold.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 [Amended]

5. Section 252.212-7001 is amended as follows:

a. By revising the clause date to read “(MAY 2002)”; and

b. In paragraph (b), in the entry “252.247-2023”, by removing “(MAR 2000)” the first time it appears and adding in its place “(MAY 2002)”.

6. Section 252.247–7023 is amended by revising the clause date, paragraph (e) introductory text, paragraph (f) introductory text, and paragraph (h), and by adding Alternate III to read as follows:

252.247–7023 Transportation of Supplies by Sea.

* * * * *

Transportation of Supplies by Sea (May 2002)

* * * * *

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(f) The Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

* * * * *

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

* * * * *

Alternate III (May 2002)

As prescribed in 247.573(b)(4), substitute the following paragraph (f) for paragraphs (f), (g), and (h) of the basic clause:

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in subcontracts that are for a type of supplies described in paragraph (b)(2) of this clause.

[FR Doc. 02–13359 Filed 5–30–02; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 226 and 252

[DFARS Case 2000–D024]

Defense Federal Acquisition Regulation Supplement; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8022 of the DoD Appropriations Act for Fiscal Year 2001. Section 8022 provides for incentive payments to DoD contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors.

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelina Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2000–D024.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements Section 8022 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106–259). Section 8022 provides funding for incentive payments to DoD contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors.

DoD published an interim rule at 66 FR 47110 on September 11, 2001. The rule revised DFARS 226.104 and added a new clause at DFARS 252.226–7001. The new clause is similar to the clause at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, but contains the DoD requirement to provide for incentive payments to subcontractors at any tier.

Nineteen sources submitted comments in response to the interim rule. A summary of the comments and the DoD response is provided below:

Comment: The DFARS policy excludes contracts awarded using FAR Part 12 (commercial item) procedures from the Indian Incentive Program. This exclusion should be removed.

DoD Response: This exclusion was established under previous DFARS Case 99–D300, published at 65 FR 19858 on April 13, 2000. A change to this exclusion is outside the scope of the present case. However, the DoD Office of Small and Disadvantaged Business Utilization is continuing to study this issue.

Comment: The definition of “Indian” should be amended to include Native Hawaiians.

DoD Response: Do not concur. The statutory basis for the Indian Incentive Program is 25 U.S.C. Chapter 17 (Section 1544). The definition of “Indian” provided in 25 U.S.C. Chapter

17 (Section 1452) does not include Native Hawaiians.

Comment: Prime contractors should be required to sponsor subcontractor claims for incentive payments.

DoD Response: Do not concur. The statute authorizing the Indian Incentive Program (25 U.S.C. 1544) provides that a contractor or subcontractor *may* be allowed an additional amount of compensation for subcontracts awarded to Indian organizations or Indian-owned economic enterprises. There is no statutory authority for DoD to require a contractor to submit or sponsor claims for incentive payments for its subcontractors.

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 DoD already was implementing the Indian Incentive Program through use of the clause at FAR 52.226–1, Indian Organizations and Indian-Owned Economic Enterprises. The FAR clause permits incentive payments to large and small contractors that use Indian organizations or enterprises as subcontractors. The new DFARS clause expands the incentive payments to subcontractors at any tier. While this expansion should benefit small businesses that award lower-tier subcontracts to Indian organizations or enterprises, the economic impact should not be substantial.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose 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 226 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 226 and 252, which was published at 66 FR 47110 on