

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: September 23, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1817

RIN 2700-AC78

Interagency Acquisition Approvals

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Federal Acquisition Regulation Supplement (NFS) by establishing a five-year limitation on interagency acquisitions. Individual orders or successive non-competitive orders for the same requirement with the same servicing agency that will exceed five years require approval of a deviation. This final rule also requires determinations and findings (D&Fs) for interagency acquisitions to identify the period of performance and whether the acquisition is for a non-competitive follow-on for the same requirement with the same servicing agency. These changes result from NASA's agreement with OMB on an action plan regarding the President's Management Agenda Competitive Sourcing element. These changes will establish greater consistency in the approval requirements for contracts, grants, cooperative agreements, and interagency acquisitions with anticipated periods of performance exceeding five years.

EFFECTIVE DATE: October 6, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph Le Cren, NASA Headquarters, Office of Procurement, Program Operations Division (Code HS), Washington, DC 20546-0001, (202) 358-0431, e-mail: jlecren@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

OMB and NASA entered into an agreement on an action plan regarding the President's Management Agenda Competitive Sourcing element. That agreement called for NASA to put in place plans for reviews and recompetitions of contracts, interagency acquisitions, and partnerships identified in inventories submitted to OMB in September 2002. In developing NASA's

plan for reviews and recompetitions, existing guidance pertaining to interagency acquisitions was reviewed and areas requiring revision or coverage were identified.

Contracts (inclusive of options), grants, and cooperative agreements that are planned to exceed five years, generally require the prior approval of the Assistant Administrator for Procurement. However, there are no limits for interagency acquisitions. This final rule establishes a similar requirement for interagency acquisitions, as well as the information to be provided for a deviation from the rule.

The FAR specifies information that is to be included in the D&Fs for interagency acquisitions. However, there is no requirement for the period of performance to be identified. This final rule establishes such a requirement in order to restrict the use of long-term acquisitions (greater than five years) that preclude the opportunity for competition. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Part 1817 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any recordkeeping or 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 Part 1817

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Part 1817 is amended as follows:

■ 1. The authority citation for 48 CFR Part 1817 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1817—SPECIAL CONTRACTING METHODS

■ 2. Amend section 1817.7201 by redesignating the existing text as

paragraph (a) and adding paragraphs (b) and (c) to read as follows:

1817.7201 Policy.

* * * * *

(b) Individual orders or successive non-competitive interagency orders for the same requirement with the same servicing agency shall not exceed five years.

(c) Requests for deviation from the five year limitation in paragraph (b) of this section shall require the approval of the Center Director if the estimated value of the order is \$5 million or less, or the Assistant Administrator for Procurement (Code HS) if the estimated value of the order exceeds \$5 million. Requests for deviation shall address:

- (1) Why more than five years is required;
- (2) Why the work must be performed by the same servicing agency; and
- (3) How long beyond the current order the requirement is expected to continue.

■ 3. Amend section 1817.7202 by redesignating existing paragraphs (c) and (d) as (d) and (e) respectively, and adding a new paragraph (c) to read as follows:

1817.7202 Determinations and findings requirements.

* * * * *

(c) In addition to the requirements in FAR 17.503, the D&F must identify the period of performance and whether the acquisition is a non-competitive follow-on for the same services from the same servicing agency. (*See* 1817.7201(b).)

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 176, 177, 178, and 179

[Docket No. RSPA-03-16099 (HM-189V)]

RIN 2137-AD85

Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations (HMR). The