

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 511 and 552

[GSAR Case No. 2003–G502]

RIN 3090–AH88

General Services Administration Acquisition Regulation; Defense Priorities and Allocations System

AGENCY: Office of Acquisition Policy,
General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement the Defense Priorities and Allocations System (DPAS) within the GSA Federal Supply Service (FSS).

DATES: Interested parties should submit comments to the Regulatory Secretariat at the address shown below on or before November 14, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—

General Services Administration,
Regulatory Secretariat (MVA), 1800 F Street,
NW., Room 4035, Attn: Ms. Laurie Duarte,
Washington, DC 20405.

Submit electronic comments via the Internet to *GSARcase.2003–G502@gsa.gov*.

Please submit comments only and cite 2003–G502 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat at (202) 501–4225, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite GSAR case 2003–G502.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Subpart 11.6 implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DoC) regulation in support of the national defense (see 15 CFR part 700). The DoC delegates authority to Delegate Agencies to place priority ratings on contracts and orders that support authorized programs. GSA is a Delegate Agency.

FAR 11.603(f) instructs agencies to provide contracting officers with specific guidance on the issuance of rated orders. The GSA Federal Supply Service issues single award and multiple award Federal Supply

Schedule contracts. These contracts are not rated orders as defined by DPAS. However, from time to time, an order placed against one of these schedule contracts may be a rated order. This rule would provide GSA contracting officers with the required specific guidance by adding a new subpart to the GSAR. The rule also requires the use of a clause that explains to schedule contractors their obligations under DPAS.

B. Executive Order 12866

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 rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

GSA does not expect this proposed rule to 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 primarily provides instructions for GSA contracting officers on including a contract clause in Federal Supply Schedules, and information on placing DPAS rated orders. Contractors are already required to give priority to DPAS rated orders under Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app 2061, *et seq.*) An Initial Regulatory Flexibility Analysis has, therefore, not been performed. GSA will consider comments from small entities concerning the affected GSAR subparts 511 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite GSAR case 2003–502, in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed change to the GSAR does not impose 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 511 and 552

Government procurement.

Dated: October 7, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR parts 511 and 552 as set forth below:

1. The authority citation for 48 CFR parts 511 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 511—DESCRIBING AGENCY NEEDS

2. Subpart 511.X is added to read as follows:

Subpart 511.X—PRIORITIES AND ALLOCATIONS

Sec.

511.X00 Scope of subpart.
511.X01 Definitions.
511.X02 General.
511.X03 Procedures.
511.X04 Solicitation provision and contract clause.

511.X00 Scope of subpart.

FAR Subpart 11.6 implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DoC) regulation (15 CFR part 700) to assure timely delivery of industrial resources (products, materials, and services) in support of approved national defense, energy, and civil emergency preparedness (Homeland Security) programs. Pursuant to DPAS Delegation 3, DoC delegated GSA the authority to use the DPAS in support of the GSA Federal supply system. This subpart implements the DPAS within GSA.

511.X01 Definitions.

As used in this subpart—

Approved Program means a program determined as necessary or appropriate for priorities and allocations support to promote the national defense. See Schedule 1 of 15 CFR part 700 for a list of Delegate Agencies, approved programs, and program identification symbols at <http://www.bxa.doc.gov/DefenseIndustrialBasePrograms/OSIES/DPAS/Default.htm>.

Authorized person means a Delegate Agency, or other entity either permitted under 15 CFR part 700, or explicitly authorized by Department of Commerce to issue DPAS rated orders.

Delegate Agency means an agency of the U.S. Government authorized by delegation from Department of Commerce to place priority ratings on contracts or orders needed to support approved programs.

Defense Priorities and Allocations System (DPAS) means the regulation published at 15 CFR part 700 that requires preferential treatment for certain contracts and orders placed by a Delegate Agency in support of an approved program.

Rated Order means a delivery or task order placed by a Delegate Agency

under the provisions of the Defense Priorities and Allocations System in support of an approved program and which requires preferential treatment as necessary to meet delivery requirements. This includes orders placed by the contractor to subcontractors or suppliers for required products, materials, and services resulting from such orders.

511.X02 General.

(a) The purpose of the Defense Priorities and Allocations System is to assure the timely availability of industrial resources to meet current national defense, energy, and civil emergency preparedness program requirements and to provide an operating system to support rapid industrial response in a national emergency. The primary statutory authority for the DPAS is Title I of the Defense Production Act of 1950, as amended, with additional authority from the Selective Service Act of 1948, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Executive Orders 12919 and 12742 delegate this authority to the Department of Commerce to administer the DPAS. DoC is further authorized to redelegate to heads of other departments and agencies (Delegate Agencies) authority under the DPAS for the priority rating of contracts and orders in support of approved programs. Within DoC, the Office of Strategic Industries and Economic Security (SIES) is assigned the implementation, administration, and compliance responsibilities for the system.

(b) The DPAS is published in the Code of Federal Regulations at 15 CFR part 700. This regulation provides an overview, a detailed explanation of operations and procedures, and other implementing guidance, including information on special priorities assistance and compliance.

(c) Orders placed under DPAS are "rated orders." Rated orders must receive preferential treatment only as necessary to meet delivery requirements. Rated orders are identified by a rating symbol of either "DX" or "DO" followed by a program identification symbol. All "DO" rated orders have equal priority with each other and take preference over unrated orders. All "DX" rated orders take preference over "DO" rated orders and unrated orders. A program identification symbol indicates which approved program is supported by the rated order.

(d) Only authorized persons may place an order containing a DPAS priority rating.

(e) Within GSA, the Federal Supply Service (FSS) has been delegated the authority to issue rated orders to meet approved national defense, energy, and civil emergency preparedness program requirements of the supply distribution program. The Commissioner, FSS, shall issue additional guidance, as may be necessary, to ensure effective implementation of its delegated DPAS authority, such as the exclusions listed in paragraph F.(2) of the 1998 Doc Delegation.

(f) Executive Order 12919 defines the jurisdictional limitations as set forth in 15 CFR 700.18(b).

511.X03 Procedures.

(a) A DPAS rating may be placed against an entire contract at time of award or an individual order issued under an existing, otherwise unrated, contract.

(b) When a DPAS rating is placed against an entire contract, the contracting officer must include the clause and provision prescribed at FAR 11.604, as well as the elements listed in paragraphs (c)(1) through (c)(3) of this section (see 15 CFR part 700.12.)

(c) When a DPAS rating is placed against an individual order issued under an existing, otherwise unrated, contract, the order must include the following elements (see 15 CFR part 700.12):

(1) The appropriate priority rating symbol (*i.e.*, either "DO" or "DX") along with the program identification symbol. As required by the 1998 DoC Delegation to GSA, when GSA contracting officers place DO rated orders, they will use program identification symbol K1. When placing a DX rated order for other agencies, GSA contracting officers will use the requesting agency program identification symbol. When a Delegate Agency places its own orders, it uses its own program identification symbol. (See Schedule 1 of 15 CFR part 700 for a listing of Delegate Agencies, approved programs, and program identification symbols).

(2) A required delivery date. The words "as soon as possible" or "immediately" do not constitute a required delivery date. A specific date or a specified number of days ARO (after receipt of order) is acceptable.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order of an individual authorized to place rated orders.

(4)(i) A statement that reads substantially as follows:

(ii) "This is a rated order certified for national defense use, and you are required to follow all the provisions of

the Defense Priorities and Allocations System regulation (15 CFR part 700)."

(d) Multiple and Single Award Schedule contracts are not rated at time of award. Individual DPAS rated orders must include the elements listed in paragraphs (c)(1) through (c)(4), of this section.

511.X04 Solicitation provision and contract clause.

The contracting officer must insert in full text the clause at 552.211–15, Defense Priorities and Allocations System Requirements, in Single and Multiple Award Schedule solicitations and resultant contracts except where the contract is wholly for products, materials, or services excluded from DPAS applicability (see 15 CFR part 700.18).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 552.211–XX to read as follows:

552.211–XX Defense Priorities and Allocations System Requirements.

As prescribed at 511.X04, insert the following clause:

Defense Priorities and Allocations System Requirements (Date)

(a) *Definitions.* *Approved Program* means a program determined to be necessary or appropriate for priorities and allocations support to promote the national defense (see Schedule 1 of 15 CFR part 700 for a list of Delegate Agencies, approved programs, and program identification symbols.)

Delegate Agency means an agency of the U.S. Government authorized by delegation from the Department of Commerce (DoC) to place priority ratings on contracts or orders needed to support approved programs.

Defense Priorities and Allocations System (DPAS) means the regulation published at 15 CFR part 700 that requires preferential treatment for certain contracts and orders placed by a Delegate Agency in support of an approved program.

Rated order means, for the purpose of this contract, a delivery or task order placed by a Delegate Agency under the provisions of the DPAS in support of an approved program and which requires preferential treatment as necessary to meet delivery requirements. This includes orders placed by the Contractor to subcontractors or suppliers for required products, materials, and services resulting from such orders.

(b) *Rated order requirement.* From time to time, the Contractor may receive a rated order under this contract from a Delegate Agency. The Contractor must give preferential treatment to rated orders as required by the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700). The existence of previously accepted unrated or lower rated orders is not sufficient reason to reject a rated order. Rated

orders take preference over all unrated orders as necessary to meet required delivery dates. There are two levels of ratings designated by the symbol of either "DO" or "DX." All "DO" rated orders have equal priority with each other and take preference over unrated orders. All "DX" rated orders take preference over "DO" rated orders and unrated orders. The rating designation is followed by a

program identification symbol. Program identification symbols indicate which approved program is supported by the rated order (see Schedule 1 of 15 CFR part 700 for a list of Delegate Agencies, approved programs, and program identification symbols).

(c) *Additional information.* Additional information may be obtained at the DoC

DPAS web site www.bxa.doc.gov/DefenseIndustrialBasePrograms/OSIES/DPAS/Default.htm or by contacting the designated Administrative Contracting Officer.

(End of clause)

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