

allotment at Tishomingo, Oklahoma, are 34–21–34 and 96–33–34. With this action, the proceeding is terminated.

DATES: Effective May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order* in MM Docket No. 98–155 adopted March 10, 2005, and released March 14, 2005. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals 11, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

List of Subjects in 47 CFR Part 73

Radio, Radio Broadcasting.

■ Accordingly, 47 CFR Part 73 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 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 Oklahoma, is amended by removing Channel 260C1 and adding Channel 259C1 at Alva, by adding Tishomingo, Channel 259C3, by removing Tuttle, Channel 259C3, by removing Channel 292C1 and adding Channel 261C1 at Woodward.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 2004–D024]

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8008 of the Defense Appropriations Act for Fiscal Year 2005 and Section 814 of the National Defense Authorization Act for Fiscal Year 2005. Sections 8008 and 814 establish new requirements related to the funding of multiyear contracts.

DATES: *Effective date:* May 9, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before July 8, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D024, using any of the following methods:

○ Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

○ E-mail: dfars@osd.mil. Include DFARS Case 2004–D024 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.
All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 217.1 to implement Section 8008 of the Defense Appropriations Act for Fiscal Year 2005 (Pub. L. 108–287) and Section 814 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

Section 8008 provides that DoD may not use fiscal year 2005 funds to award

a multiyear contract unless: (1) The Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract; (2) cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract; (3) the contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units; and (4) the contract does not provide for a price adjustment based on a failure to award a follow-on contract. These requirements have been added to the DFARS at 217.172(g) and (h).

Section 814 amended 10 U.S.C. 2306b and 10 U.S.C. 2306c to require that, for any multiyear contract with a cancellation ceiling exceeding \$100 million that is not fully funded, the agency head must give written notification to the congressional defense committees of (1) the cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned; (2) the extent to which costs of contract cancellation are not included in the budget for the contract; and (3) a financial risk assessment of not including budgeting for costs of contract cancellation. These requirements have been added to the DFARS at 217.171(a)(5) and 217.172(e)(2)(ii).

In addition to implementation of the new statutory requirements, DoD has relocated text from DFARS 217.173(b) to 217.172(e) to more closely align with the structure of 10 U.S.C. 2306b(h).

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 does not expect this 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 addresses DoD planning and budget considerations with regard to multiyear contracts. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D024.

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.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 8008 of the Defense Appropriations Act for Fiscal Year 2005 (Pub. L. 108-287) and Section 814 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Sections 8008 and 814 establish new requirements related to funding that DoD must meet before entering into multiyear contracts for supplies or services. Sections 8008 and 814 became effective upon enactment on August 5, 2004, and October 28, 2004, respectively. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR Part 217 is amended as follows:

1. The authority citation for 48 CFR Part 217 continues to read as follows:

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

PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.170 is amended by revising paragraph (d)(1)(i) to read as follows:

217.170 General.

* * * * *

(d)(1) * * *

(i) Exceed \$500 million (see 217.171(a)(6); 217.172(c); and 217.172(e)(4));

* * * * *

3. Section 217.171 is amended as follows:

a. By redesignating paragraph (a)(5) as paragraph (a)(6); and

b. By adding a new paragraph (a)(5) to read as follows:

217.171 Multiyear contracts for services.

(a) * * *

(5) If the budget for a contract that contains a cancellation ceiling in excess of \$100 million does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(i) The notification required by paragraph (a)(4) of this section shall include—

(A) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(B) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) A financial risk assessment of not including budgeting for costs of contract cancellation (10 U.S.C. 2306c(d)); and

(ii) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award in accordance with the procedures at PGI 217.1.

* * * * *

4. Section 217.172 is amended as follows:

a. By revising the last sentence of paragraph (a);

b. By redesignating paragraph (e) as paragraph (f); and

c. By adding new paragraphs (e), (g), and (h) to read as follows:

217.172 Multiyear contracts for supplies.

(a) * * * For additional policies that apply only to multiyear contracts for weapon systems, see 217.173.

* * * * *

(e) The head of the agency shall ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (b) 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)).

(i) The head of the agency shall submit information supporting this certification to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(ii) In the case of a contract with a cancellation ceiling in excess of \$100 million, if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(A) The head of the agency shall, as part of this certification, give written notification to the congressional defense committees of—

(1) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(2) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(3) A financial risk assessment of not including the budgeting for costs of contract cancellation (10 U.S.C. 2306b(g)); and

(B) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award in accordance with the procedures at PGI 217.1.

(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 shall 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) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(4)(A)).

(6) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law (10 U.S.C. 2306b(i)(4)(b)).

(7) 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 shall 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 shall—

- (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 (AT&L) DPAP for transmission to Congress via the Secretary of Defense and the President.

* * * * *

(g) The head of an agency shall not award a multiyear contract using fiscal year 2005 appropriated funds unless—

- (1) The Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract;

(2) Cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract; and

(3) The contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units (Section 8008 of Pub. L. 108–287).

(h) Do not award a multiyear contract using fiscal year 2005 appropriated funds that provides for a price adjustment based on a failure to award a follow-on contract (Section 8008 of Public Law 108–287).

■ 5. Section 217.173 is revised to read as follows:

217.173 Multiyear contracts for weapon systems.

As authorized by 10 U.S.C. 2306b(h) and subject to the conditions in

217.172(e), the head of the agency may enter into a multiyear contract for—

(a) A weapon system and associated items, services, and logistics support for a weapon system; and

(b) 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).

217.174 [Amended]

■ 6. Section 217.174 is amended in paragraph (c) by removing “217.173(b)(6)” and adding in its place “217.172(e)(6)”.

[FR Doc. 05–9183 Filed 5–6–05; 8:45 am]

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