

so as to minimize the potential for mishaps.

* * * * *

■ 7. Section 223.370-4 is revised to read as follows:

223.370-4 Procedures.

Follow the procedures at PGI 223.370-4.

■ 8. Section 223.405 is revised to read as follows:

223.405 Procedures.

Follow the procedures at PGI 223.405.

223.570-1 [Removed]

■ 9. Section 223.570-1 is removed.

223.570-2 [Redesignated as 223.570-1]

■ 10. Section 223.570-2 is redesignated as section 223.570-1.

223.570-3 [Removed]

■ 11. Section 223.570-3 is removed.

223.570-4 [Redesignated as 223.570-2]

■ 12. Section 223.570-4 is redesignated as section 223.570-2.

■ 13. Section 223.803 is revised to read as follows:

223.803 Policy.

(1) *Contracts.* No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with Section 326, Public Law 102-484 (10 U.S.C. 2301 (repealed) note). This restriction is in addition to any imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.

(2) *Modifications.* (i) Contracts awarded before June 1, 1993, with a value in excess of \$10 million, that are modified or extended (including option exercise) and, as a result of the modification or extension, will expire more than one year after the effective date of the modification or extension, must be evaluated in accordance with agency procedures for the elimination of ozone-depleting substances.

(A) The evaluation must be carried out within 60 days after the first modification or extension.

(B) No further modification or extension may be made to the contract until the evaluation is complete.

(ii) If, as a result of this evaluation, it is determined that an economically

feasible substitute substance or alternative technology is available, the contracting officer shall modify the contract to require the use of the substitute substance or alternative technology.

(iii) If a substitute substance or alternative technology is not available, a written determination shall be made to that effect at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.223-7004 [Amended]

■ 14. Section 252.223-7004 is amended in the introductory text by removing “223.570-4” and adding in its place “223.570-2”.

[FR Doc. 05-23730 Filed 12-8-05; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 216 and 217

[DFARS Case 2003-D097/2004-D023]

Defense Federal Acquisition Regulation Supplement; Contract Period for Task and Delivery Order Contracts

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 843 of the National Defense Authorization Act for Fiscal Year 2004 and Section 813 of the National Defense Authorization Act for Fiscal Year 2005. Section 843 placed a 5-year limit on the period of task or delivery order contracts awarded under 10 U.S.C. 2304a. Section 813 further amended 10 U.S.C. 2304a to permit a total period of up to 10 years, which may be exceeded if the head of the agency determines in writing that exceptional circumstances require a longer contract period.

EFFECTIVE DATE: December 9, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D097.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Section 843 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) and Section 813 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Section 843 amended the general authority for task and delivery order contracts at 10 U.S.C. 2304a to specify that a task or delivery order contract entered into under that section may cover a total period of not more than 5 years. Section 813 further amended 10 U.S.C. 2304a to permit a total contract period of not more than 10 years, unless the head of the agency determines in writing that exceptional circumstances require a longer contract period.

DoD published an interim rule implementing Section 843 of Public Law 108-136 at 69 FR 13478 on March 23, 2004. As a result of public comments received on the interim rule, and to implement the provisions of Section 813 of Public Law 108-375, DoD published a second interim rule at 69 FR 74992 on December 15, 2004. Four sources submitted comments on the second interim rule. A discussion of the comments is provided below.

1. *Comment: Clarification of reporting requirement.* One respondent recommended amendment of the rule to specify the frequency and ending date of the reporting requirement that applies to contracts with ordering periods exceeding 10 years.

DoD Response: Concur. The final rule amends DFARS 217.204(e)(ii) to specify that DoD must submit a report to Congress, annually through fiscal year 2009, when an ordering period is extended beyond 10 years.

2. *Comment: Applicability to information technology contracts.* One respondent recommended consolidation of the text addressing the types of contracts to which the rule does not apply. In addition, the respondent recommended deletion of text addressing the applicability of the rule to information technology contracts. The respondent did not believe it was necessary to call out a single type of contract with regard to the rule's applicability.

DoD Response: Partially concur. The final rule revises DFARS 217.204(e)(iii) to consolidate the text addressing the types of contracts to which the rule does not apply, and to remove the reference to information technology contracts. However, a parenthetical phrase emphasizing the applicability of the rule to information technology contracts has been added at 217.204(e)(i), since FAR 17.204(e) specifically exempts

information technology contracts from the regulatory time limits being supplemented by this rule.

3. *Comment: Period of performance for certain performance-based contracts.*

One respondent stated that some performance-based contracts require periods of performance of 15 to 20 years to obtain the desired end results and questioned how to award these contracts given the limits imposed by the rule.

DoD Response: The rule permits agencies to authorize longer performance periods when deemed necessary for exceptional circumstances.

4. *Comment: Administrative error.*

One respondent requested clarification of the DoD Response to Comment 1 in the preamble to the interim rule published at 69 FR 74992 on December 15, 2004. The text contained an erroneous reference to DFARS 217.204(e)(iii) regarding the limit on period of performance for task and delivery orders.

DoD Response: Concur that the reference was in error. The correct reference is DFARS 217.204(e)(iv).

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 has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. The analysis is summarized below. A copy of the analysis may be obtained from the point of contact specified herein.

This rule finalizes an interim DFARS rule published on December 15, 2004. The rule implements Section 843 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) and Section 813 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Section 843 of Public Law 108-136 limited the period of a task or delivery order contract awarded under 10 U.S.C. 2304a to not more than 5 years. Section 813 of Public Law 108-375 revised the limitation to not more than 10 years, unless the head of the agency determines in writing that exceptional circumstances require a longer contract period. DoD received no comments on the initial regulatory flexibility analysis. As a result of comments received on the interim rule, the final rule clarifies the types of contracts that are subject to the rule and clarifies that the Congressional reporting requirement, applicable to contracts with ordering periods exceeding 10 years, expires at the end of fiscal year 2009. The rule applies to DoD task or

delivery order contracts awarded under the authority of 10 U.S.C. 2304a. It may affect businesses interested in receiving such contracts. The impact on small entities is unknown at this time.

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 216 and 217

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 216 and 217, which was published at 69 FR 13478 on March 23, 2004, and which was amended by the interim rule published at 69 FR 74992 on December 15, 2004, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 216 and 217 continues to read as follows:

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

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.204 is revised to read as follows:

217.204 Contracts.

(e)(i) Notwithstanding FAR 17.204(e), the ordering period of a task order or delivery order contract (including a contract for information technology) awarded by DoD pursuant to 10 U.S.C. 2304a—

(A) May be for any period up to 5 years;

(B) May be subsequently extended for one or more successive periods in accordance with an option provided in the contract or a modification of the contract; and

(C) Shall not exceed 10 years unless the head of the agency determines in writing that exceptional circumstances require a longer ordering period.

(ii) DoD must submit a report to Congress, annually through fiscal year 2009, when an ordering period is extended beyond 10 years in accordance with paragraph (e)(i)(C) of this section. Follow the procedures at PGI 217.204(e) for reporting requirements.

(iii) Paragraph (e)(i) of this section does not apply to the following:

(A) Contracts, including task or delivery order contracts, awarded under other statutory authority.

(B) Advisory and assistance service task order contracts (authorized by 10 U.S.C. 2304b that are limited by statute to 5 years, with the authority to extend an additional 6 months (see FAR 16.505(c)).

(C) Definite-quantity contracts.

(D) GSA schedule contracts.

(E) Multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard.

(iv) Obtain approval from the senior procurement executive before issuing an order against a task or delivery order contract subject to paragraph (e)(i) of this section, if performance under the order is expected to extend more than 1 year beyond the 10-year limit or extended limit described in paragraph (e)(i)(C) of this section (see FAR 37.106 for funding and term of service contracts).

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2004-D013]

Defense Federal Acquisition Regulation Supplement; Free Trade Agreements—Australia and Morocco

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement new Free Trade Agreements with Australia and Morocco. The Free Trade Agreements were scheduled to become effective on or after January 1, 2005. However, the Morocco Free Trade Agreement has not yet entered into force and is therefore removed from this final rule.

DATES: *Effective Date:* December 9, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2004-D013.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 70 FR 2361 on January 13, 2005, to implement new Free Trade Agreements