

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 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, 336.

##### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Kingsland, Channel 284A.

Federal Communications Commission.

**John A. Karousos,**  
*Assistant Chief,*  
*Audio Division,*  
*Media Bureau.*

[FR Doc. 2010–17225 Filed 7–14–10; 8:45 am]

**BILLING CODE 6712–01–S**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 10–1148; MB Docket No. 09–130; RM–11538]

#### FM Table of Allotments, Maupin, Oregon

**AGENCY:** Federal Communications Commission

**ACTION:** Final rule.

**SUMMARY:** The Audio Division grants the Petition for Reconsideration filed on behalf of Maupin Broadcasting

Company, requesting the deletion of Channel 244C2 at Maupin, Oregon. We are deleting Channel 244C2 at Maupin because there is no other expression of interest in the vacant channel. It is Commission policy to refrain from maintaining an allotment were there are no bona fide expressions of interest.

**DATES:** Effective August 12, 2010.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Memorandum Opinion and Order, MB Docket No. 09–130, adopted June 25, 2010, and released June 28, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room 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, 800–378–3160 or via the company’s website, <<http://www.bcpiweb.com>>.

The Commission will send a copy of this Memorandum Opinion and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 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, 336.

##### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Maupin, Channel 244C2.

Federal Communications Commission.

**John A. Karousos,**  
*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 2010–17226 Filed 7–14–10; 8:45 am]

**BILLING CODE 6712–01–S**

#### GENERAL SERVICES ADMINISTRATION

#### 48 CFR Parts 516 and 552

[GSAR Amendment 2010–03; GSAR Case 2006–G504 (Change 46) Docket 2008–0007; Sequence 12]

RIN 3090–AI58

#### General Services Administration Acquisition Regulation; Rewrite of GSAR Part 516, Types of Contracts

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

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to update GSAR Part 516, Types of Contracts. GSAR part 516 has been revised to add and/or clarify policy pertaining to requirements for types of contracts.

**DATES:** *Effective Date:* August 16, 2010.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Warren J. Blankenship, Procurement Analyst, at (202) 501–1900. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), Room 4041, 1800 F Street, NW., Washington, DC, 20405, (202) 501–4755. Please cite Amendment 2010–03, GSAR Case 2006–G504 (Change 46).

**SUPPLEMENTARY INFORMATION:**

## A. Background

### The GSAM Rewrite and Project and Process

This rule is part of the GSA Acquisition Manual (GSAM) Rewrite Project to revise the regulation in order to maintain consistency with the Federal Acquisition Regulation (FAR), update regulations, and implement streamlined and innovative acquisition procedures. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** at 71 FR 7910 on February 15, 2006, with a request for comments on the entire GSAM. As a result, six comments were received on GSAR part 516. In addition, applicable statutes, GSA Acquisition Letters, Federal Acquisition Service (FAS) (formerly the Federal Supply Service (FSS)) and Public Building Service (PBS) Acquisition Letters, and GSA delegations of authority were considered in developing the initial draft. Prior to publication of a proposed rule, there was extensive internal review and comment.

A proposed rule for GSAR part 516 was published in the **Federal Register** at 73 FR 39275 on July 9, 2008. The public comment period for GSAR part 516 closed on September 8, 2008. A total of 11 comments were received by the close of the public comment period.

The proposed rule aligned GSAR part 516 to the structure of FAR part 16; revised the prescriptions for clauses included in GSAR 516.203–4, Contract clauses; and GSAR 516.506, Solicitation Provisions and Contract Clauses; and made changes to the title and numbering of GSAR 516.603–3, Limitations. Additionally, the associated clauses located in GSAR 552.216 were amended to: relocate GSAR 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts, to GSAR 552.238; retain and revise GSAR 552.216–71, Economic Price Adjustment—Special Order Program Contracts, revise GSAR 552.216–72, Placement of Orders; make minor edits to GSAR 552.216–73, Ordering information; and include a new GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman.

The following subparts were retained:

Subpart Number	Subpart Title
516.2	Fixed–Price Contracts.
516.4	Incentive Contracts.
516.5	Indefinite–Delivery Contracts.
516.6	Time–and–Materials, Labor–Hour, and

### Letter Contracts.

In the final rule, these four subparts are retained. Additionally, other important changes include the addition of the verbiage “Additional” at the beginning of the title to GSAR 516.603–70, Limitations on the use of letter contracts for architect–engineer (A–E) services and the addition of the verbiage “under the PBS Design Excellence Program” added at the end of the title; revision of paragraph (a) in GSAR 516.603–70 to clarify that a complete price proposal is required prior to definitization of a contract in accordance with FAR 52.216–25; removal of GSAR 516.603–70 from regulatory to non–regulatory because it provides guidance to the contracting officer; and revisions to proposed GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman, to clarify the Ombudsman’s role and responsibilities, as well as, to provide contact information.

### Discussion of Comments

There were six public comments received in response to the ANPR published in the **Federal Register** at 71 FR 7910 on February 15, 2006. A proposed rule was published in the **Federal Register** at 74 FR 4596 on July 9, 2008. The comment period closed September 8, 2008, with 11 comments received.

*Comment:* One commenter noted that the rule is unnecessarily broad in scope. It would relax requirements for the use of sinking lines that are already in place and being used by many New England lobster fisherman. Moreover, the proposed rule would leave no protections in place for whales during the delay, except for the requirement to use weak links. The National Marine Fisheries Service (NMFS) has determined that weak links alone are inadequate to prevent entanglements of whales.

*Response:* The team does not concur with the commenter. This comment had no relevance to the case therefore, no further action was necessary.

*Comment:* The next commenter noted that GSA needs to remind contracting officers under GSAR subpart 516.2 that, in order for a contract to be procured on a firm fixed–price basis, the solicitation must be based on reasonably definite functional or detailed specification when the contracting officer can establish fair and reasonable prices at the outset.

*Response:* The team does not concur with the commenter. The team reviewed FAR subpart 16.2 and found that this topic was adequately covered.

*Comment:* The next commenter noted that GSA should require contracting officers to include the fixed–price basis for the requirements (e.g., performance period, man–hours), in a solicitation/request for quotation if it is to be awarded and reported as a fixed–price contract. In other words, the GSAM should forbid contracting officers from procuring or reporting the action as a fixed–price contract award.

*Response:* The team does not concur with the commenter. Though the team concurs with the intent of the comment, the comment has more to do with coding and reporting of contract types. Thus, this is not appropriate for this GSAR part. The use of time–and–management (T&M)/labor–hour vs. fixed–price contracts is adequately covered in FAR sections 16.601, 16.602, and 16.202–2, respectively.

*Comment:* The next commenter noted that the GSAM should prohibit GSA contracting officers from unilaterally reducing any hours or contract price on GSAR subpart 516.6 not–to–exceed contracts, or de–obligating awarded funds without a bilateral supplemental agreement. It may be more appropriate to address this in GSAR part 543, but the violations seem to occur only on not–to–exceed (T&M/labor–hour) contracts that are being awarded and reported by GSA contracting officers as fixed–price contracts.

*Response:* The team concurs with the commenter; however, proper placement of the referenced action should be made in GSAR Part 543, Contract Modifications.

*Comment:* The next commenter noted that GSA should consider adding the word “Additional” at the beginning of the GSAR 516.603–70, Limitations on the use of letter contracts for architect–engineer (A–E) services. This could serve as a simple reminder that there are other “limitations” that must be considered in accordance with FAR 16.603–3. In particular, the vast majority of contracting officers fail to obtain the written determination from the Head of the Contracting Activity (HCA), or designee, that “no other contract is suitable.”

*Response:* The team concurs with the commenter. The text has been revised accordingly.

*Comment:* The next commenter noted that restriction placed on contractors to submit a “price proposal before award” of a letter contract, at FAR 16.603–3(c), requires contracting officers to include in the mandated clause at FAR 52.216–25 a “definitization schedule” including “(1) dates for submission of the contractor price proposal.” Similarly, the FAR clause 52.216–25 itself

includes notes to the contracting officer to insert “dates for submission of proposal.” Isn’t this requirement inconsistent with the flexibilities demanded throughout the FAR, especially in FAR part 1, in addition to the FAR 16.6 regulations?

*Response:* The team does not concur with the commenter. A full proposal is required prior to definitization in accordance with FAR 52.216–25. Paragraph (a) of GSAR 516.603–70 has been revised for clarification of this point.

*Comment:* The next commenter noted a concern with the prohibition placed on contracting officers to “not authorize the A–E to begin the design effort before the letter contract is definitized.” The commenter feels that this may defeat the whole purpose of a letter contract which, according to FAR 16.603–1, is to authorize “the contractor to begin immediately to perform the services. If this is so, then the determination should support any decision to not award a letter contract if contracting officers comply with FAR 16.603–3. Therefore, the commenter’s recommendation is to delete GSAR 516.603–70 in its entirety from the GSAM/GSAR. Alternatively, GSA should consider incorporating oversight requirements into this section to review all determinations that authorize letter contracts to ensure decisions are being made appropriately. The GSA should also consider auditing all unilateral/administrative modifications that involve any change in funding/costs.

*Response:* The team does not concur with the commenter. The team will retain GSAR 516.603–70 because it speaks to those services that can be performed outside of the actual design effort. This section has been revised to clarify that only those services independent of the design effort can commence without definitization. Otherwise, the contracting officer shall not commence the design effort until definitization of the contract.

*Comment:* The next commenter noted that the proposed clause GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman, allows GSA to comply with FAR 16.505(b)(5), which requires each agency to designate such an Ombudsman. However, the clause, as written, is imprecise and could be confusing to contractors and GSA acquisition teams. The commenter suggests adding the following: “GSA has designated a Task–Order and Delivery–Order Ombudsman who will review complaints from contractors and ensure that they are afforded a fair opportunity for consideration in the award of task or delivery orders under Indefinite

Delivery/Indefinite Quantity (ID/IQ) contracts, consistent with the procedures in the contract.”

*Response:* The team concurs with the commenter. The text has been revised to incorporate the commenter’s suggested language for clarification.

*Comment:* The next commenter noted that the proposed clause GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman, is not clear, as written, as to whether a contractor with a complaint should go through the contracting officer to reach the Ombudsman (with a copy to the contracting officer), or whether a contractor could do either. The commenter suggests adding the following: “Written complaints shall be submitted to the Ombudsman, with a copy to the Contracting Officer.”

*Response:* The team concurs with the commenter. The text has been revised to incorporate the commenter’s suggested language for clarification.

*Comment:* The next commenter noted that GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman, is not clear as to whether the Ombudsman, should he or she find that fair opportunity is not being provided to a contractor, is going to direct the contracting activity to provide fair opportunity in the future; is going to direct that an order be withdrawn from the firm that received it; or change the decision of the acquisition team (if such an order has not yet been placed). Although, this information does not need to go into the clause, the GSAR should spell out the actual role of the Ombudsman so that acquisition teams are aware.

*Response:* The team partially concurs with the commenter. The Ombudsman’s jurisdiction covers all actions as they pertain to task– and delivery–order actions. As such, the team more appropriately revised GSAR Subpart 516.5, Indefinite–Delivery Contracts, to add a new section GSAR 516.505, Task–Order and Delivery–Order Ombudsman, to outline this in paragraph (b). Additionally, since this is being directed to contracting officers, it was added to the non–regulatory portion of this subpart.

*Comment:* The next two commenters noted that the proposed clause GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman, as written, is too broad in nature when it states “The GSA Ombudsman will exercise jurisdiction on any matters pertaining to ID/IQ contracts awarded by GSA.” The commenters recommend that the first sentence be deleted in its entirety and that the clause sets forth who actually is designated as Ombudsman.

*Response:* The team concurs with the commenter. As such, the team has revised the clause to conform to the commenter’s concerns regarding the GSA Ombudsman’s authority and to outline the exact designation of the GSA Ombudsman, inclusive of contact information.

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.

## B. Regulatory Flexibility Act

The General Services Administration 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 the revisions are not considered substantive. The revisions only update and reorganize existing coverage.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes do not impose additional information collection requirements to the paperwork burden previously approved under OMB Numbers 3090–0243 and 3090–0248.

## List of Subjects in 48 CFR Parts 516 and 552

Government procurement.

Dated: May 6, 2010.

**Rodney P. Lantier,**

*Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.*

■ Therefore, GSA amends 48 CFR parts 516 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 516 and 552 continues to read as follows:

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

## PART 516—TYPES OF CONTRACTS

■ 2. Revise section 516.203–4 to read as follows:

### 516.203–4 Contract clauses.

(a) *Special Order Program Contracts.* In multiyear solicitations and contracts, after making the determination required by FAR 16.203–3, use 552.216–71, Economic Price Adjustment Special Order Program Contracts, or a clause prepared as authorized in paragraph (a)(3) of this subsection.

(1) If the contract includes one or more options to extend the term of the contract, use the clause with its Alternate I or a clause substantially the

same as 552.216-71 with its Alternate I suitably modified.

(2) In a contract requiring a minimum adjustment before the price adjustment mechanism is effectuated, use the basic clause with Alternate II or with Alternate I and Alternate II.

(3) If the Producer Price Index is not an appropriate indicator for price adjustment, modify the clause to use an alternate indicator for adjusting prices. Similarly, if other aspects of 552.216-71 are not appropriate, use an alternate clause following established procedures.

(b) *Adjustments based on cost indexes of labor or material.* (1) If the contracting officer decides to provide for adjustments based on cost indexes of labor or material, prepare a clause that defines each of the following elements:

- (i) The type of labor and/or material subject to adjustment;
- (ii) The labor rates, including any fringe benefits and/or unit prices of materials that may be increased or decreased;

(iii) The index(es) that will be used to measure changes in price levels and the base period or reference point from which changes will be measured; and

(iv) The period during which the price(s) will be subject to adjustment.

(2) The contracting director must approve use of this clause.

■ 3. Revise section 516.506 to read as follows:

**516.506 Solicitation provisions and contract clauses.**

(a) In solicitations and contracts for Special Order Program items, when the contract authorizes FAS and other activities to issue delivery or task orders, insert the clause at 552.216-72, Placement of Orders. If only FAS will issue delivery or task orders, insert the clause with its Alternate I.

(b) In solicitations and contracts for GSA awarded ID/IQ contracts, insert clause 552.216-74, Task-Order and Delivery-Order Ombudsman.

(c) If the clause at 552.216-72 is prescribed, insert the provision at 552.216-73, Ordering Information, in solicitations for Special Order Program items and in other FAS Program solicitations.

**Subpart 516.6 [Removed]**

■ 4. Remove subpart 516.6, consisting of sections 516.603 and 516.603-3.

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 5. Amend section 552.216-71 by revising the section heading, the introductory text, the clause heading,

the date of the clause, and the first sentence of paragraph (b); the date of Alternate I, the Alternate I introductory text, and the introductory text of Alternate I (b); the date of Alternate II, the Alternate II introductory text, and Alternate II paragraph (g) to read as follows:

**552.216-71 Economic Price Adjustment—Special Order Program Contracts.**

As prescribed in 516.203-4(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—  
SPECIAL ORDER PROGRAM CONTRACTS  
(AUG 2010)

\* \* \* \* \*

(b) During the term of the contract, the award price may be adjusted once during each 12-month period upward or downward. However, if an upward adjustment, a maximum of \_\_\_\_\_ percent shall apply. \*

\* \* \* \* \*

*Alternate I.* (AUG 2010). As prescribed in 516.203-4(a)(1) and (2), substitute the following paragraphs (b), (e), and (f) for paragraphs (b), (e), and (f) of the basic clause:

(b) Once during each 12-month period, the contract price may be adjusted upward or downward a maximum of \_\_\_\_\_ percent.

\* \* \* \* \*

*Alternate II.* (AUG 2010). As prescribed in 516.203-4(a)(2), add the following paragraph (g) to the basic clause.

(g) No price adjustment will be made unless the percentage change in the PPI is at least \_\_\_\_\_ percent.

The Contracting Officer should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.

- 6. Amend section 552.216-72 by—
- a. Revising the introductory text, the date of the clause, and paragraphs (c) and (g);
- b. Revising the date of Alternate I, the Alternate I introductory text, and the first sentence of Alternate I paragraph (a);
- c. Removing from Alternate I paragraphs (c) and (d) the word “FSS” and adding “FAS” in its place; and
- d. Removing Alternates II, III, and IV.
- The revised text reads as follows:

**552.216-72 Placement of Orders.**

As prescribed in 516.506(a), insert the following clause:

PLACEMENT OF ORDERS (AUG 2010)

\* \* \* \* \*

(c) If the Contractor agrees, General Services Administration’s Federal Acquisition Service (FAS) will place all orders by EDI using computer-to-

computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor’s agreement, other agencies may place orders by EDI.

\* \* \* \* \*

(g) The basic content and format of the TPA will be provided by: General Services Administration, Office of the Chief Information Officer (QI), 2100 Crystal Drive, Arlington, VA 22202, Telephone: (703) 605-9444.

*Alternate I.* (AUG 2010). As prescribed in 516.506(a), substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) All delivery orders (orders) under this contract will be placed by the General Services Administration’s Federal Acquisition Service (FAS). \* \*

\* \* \* \* \*

- 7. Amend section 552.216-73 by—
- a. Revising the introductory paragraph and the date of the clause;
- b. Removing from paragraph (a) “Federal Supply Service (FSS)” and adding “Federal Acquisition Service (FAS)” in its place;
- c. Adding paragraph (e);
- d. Removing from Alternate I “516.506(e)” and adding “516.506(c)” in its place; and
- e. Removing Alternate II.
- The revised and added text reads as follows:

**552.216-73 Ordering Information.**

As prescribed in 516.506(c), insert the following provision:

ORDERING INFORMATION (AUG 2010)

\* \* \* \* \*

(e) Offerors marketing through dealers are requested to indicate below whether those dealers will be participating in the proposed contract.

Yes ( ) No ( )  
If “yes” is checked, ordering information to be inserted above shall reflect that in addition to offeror’s name, address, and facsimile transmission telephone number, orders can be addressed to the offeror’s name, c/o nearest local dealer. In this event, two copies of a list of participating dealers shall accompany this offer, and shall also be included in Contractor’s Federal Supply Schedule pricelist.

\* \* \* \* \*

■ 8. Add section 552.216-74 to read as follows:

**552.216-74 Task-Order and Delivery-Order Ombudsman.**

As prescribed in 516.506(b), insert the following clause:

TASK-ORDER AND DELIVERY-ORDER OMBUDSMAN (AUG 2010)

GSA has designated a Task-Order and Delivery-Order Ombudsman who will review complaints from contractors and ensure that they are afforded a fair opportunity for consideration in the award of task or delivery orders under Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, consistent with the procedures in the contract. Written complaints shall be submitted to the Ombudsman, with a copy to the Contracting Officer.

In the case that the contractor is not satisfied with the resolution of the complaint by the GSA Task-Order and Delivery-Order Ombudsman, the contractor may follow the procedures outlined in subpart 33.1.

The GSA Ombudsman is the Director, Office of Acquisition Integrity located at: General Services Administration (GSA), Office of Governmentwide Policy (OGP), Office of Acquisition Policy (MV), Acquisition Integrity Division (MVA), 1800 F Street, NW., Room 4014, Washington, D.C. 20405, Telephone: (202) 219-3454, Fax: (202) 219-3615, E-mail: [joseph.neurauter@gsa.gov](mailto:joseph.neurauter@gsa.gov).  
[FR Doc. 2010-17140 Filed 7-14-10; 8:45 am]

BILLING CODE 6820-61-S

## DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3002, 3007, 3009, 3016, 3034, 3035, and 3052

[Docket No. DHS-2009-0006]

RIN 1601-AA49

### Homeland Security Acquisition Regulation; Lead System Integrators [HSAR Case 2009-003]

**AGENCY:** Office of the Chief Procurement Officer, DHS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Department of Homeland Security (DHS) is issuing an interim rule amending the Homeland Security Acquisition Regulation (HSAR) to implement section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. This section of the Act and these implementing regulations restrict contractors from acting as lead system integrators in the acquisition of DHS major systems if they have direct financial interests in the development or construction of any individual system or element of any system of systems they integrate subject to stated exceptions.

**DATES:** *Effective Date:* This rule is effective July 15, 2010.

*Comments Due Date:* Comments must reach the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, on or before August 16, 2010.

**ADDRESSES:** Please submit written comments, identified by agency name and docket number DHS-2009-0006, by one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>. To submit comments, follow instructions on [www.regulations.gov](http://www.regulations.gov) and use docket number DHS-2009-0006.

(2) By mail to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, ATTN: Timothy J. Frank, 245 Murray Drive SW., STOP 0415, Washington, DC 20528-0415.

**FOR FURTHER INFORMATION CONTACT:** Timothy J. Frank, Senior Procurement Analyst, at (202) 447-5252 for clarification of content. Please cite HSAR Case 2009-003.

#### SUPPLEMENTARY INFORMATION:

I. Request for Comments

II. Background

III. Discussion of Interim Rule

IV. Regulatory Analyses

- A. Executive Order 12866 Assessment
- B. Determination To Issue an Interim Rule
- C. Regulatory Flexibility Act
- D. Paperwork Reduction Act
- E. National Environmental Policy Act

#### I. Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written comments, views, or arguments on all or any aspect of this rule. Comments must be received by August 16, 2010. Comments should be organized by Homeland Security Acquisition Regulation (HSAR) Part, and address the specific section that is being commented on. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. See **ADDRESSES** above for information on how to submit comments. If you submit comments by mail, please submit them in an unbound format, on 8½-by-11-inch paper, suitable for copying and optical character recognition. If you would like DHS to acknowledge receipt of comments submitted by mail, please enclose a self-addressed stamped post card or envelope. DHS will consider all comments and material received during the comment period. Access to the docket, including background documents and comments received, can be obtained at <http://www.regulations.gov> which contains relevant

instructions under the FAQs tab on the home page.

## II. Background

The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110-28, section 6405, 121 Stat. 112, 176 (2007) (codified as 6 U.S.C. 396; hereinafter "Section 396"), limits firms that can serve as lead system integrators on DHS acquisitions of major systems. Such contractors may have no direct financial interest in the development or construction of any individual system or element of any system of systems they would integrate, unless one of the stated exceptions has been satisfied.

One exception applies when the contractor is selected by a subcontractor as a lower-tier subcontractor, through a process over which the contractor had no control, to develop or construct an individual system or element of any system of systems the contractor would integrate. The other exception applies where the lead system integrator was selected using competitive procedures, DHS takes appropriate steps to prevent any organizational conflicts of interest in the selection process, and the Secretary of Homeland Security certifies these facts to various committees in Congress.

Section 396 also requires DHS to update its acquisition regulations and to include a definition of "lead system integrators" modeled after that used by the Department of Defense and a specification of various types of contracts and fee structures that are appropriate for use with lead system integrators. This rule implements Section 396.

This rule is issued by DHS's Chief Procurement Officer, who is the Senior Procurement Executive (SPE), see 41 U.S.C. 414 and DHS Delegation Number 0700, under authority of 5 U.S.C. 301-302, the Office of Federal Procurement Policy Act, Public Law 93-400, 88 Stat. 796 (1974), including sections 22 and 25, 41 U.S.C. 418b and 421, and FAR 48 CFR part 1, subpart 1.3.

## III. Discussion of Interim Rule

The interim rule revises (HSAR) 48 CFR 3002.101, 3007.106, 3009.5, 3016.1, 3034.004, 3035.008, 3052.209-74 and 3052.209-75 to implement Public Law 110-28, Title VI, Section 6405.

This rule changes the HSAR as follows:

- Amends the definition of "Major system" in (HSAR) 48 CFR 3002.101 and removes the reference to the obsolete Management Directive (MD) 1400, Investment Review Process. The