

their petitions without delaying our prompt action on the petitions for reconsideration of the Sixth Report and Order.

6. We are issuing OET Bulletin No. 69 concurrent with this Order. Interested parties are advised that this document may be revised based on any actions that the Commission may take on reconsideration.

7. Accordingly, it is ordered that, pursuant to Sections 4(i) and 303(r) or the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 0.31, 0.241, 1.3, and 1.429 of the Commission's rules, 47 CFR 0.31, 0.241, 1.3, 1.429, parties that submitted petitions for reconsideration requesting modification of their DTV allotments may submit supplemental filings relating to those requests on or before August 22, 1997.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

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DEPARTMENT OF DEFENSE

48 CFR Parts 235, 243, and 252

[DFARS Case 97-D302]

Defense Federal Acquisition Regulation Supplement; Certification of Requests for Equitable Adjustment

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement 10 U.S.C. 2410(a), which requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete.

DATES: Effective date: July 11, 1997. Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 9, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please

cite DFARS Case 97-D302 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds a clause at DFARS 252.243-7002, Certification of Requests for Equitable Adjustment, to implement 10 U.S.C. 2410(a), as amended by Section 2301 of the Federal Acquisition Streamlining Act of 1994 (FASA) Pub. L. 103-355).

A similar clause previously existed at DFARS 252.233-7000, Certification of Claims and Requests for Adjustment or Relief. The previous clause implemented 10 U.S.C. 2410e, and required contractor certification of requests for equitable adjustment as well as certification of claims and requests for relief under Public Law 85-804. Section 2301 of FASA repealed 10 U.S.C. 2410e, and the clause at 252.233-7000 was removed from the DFARS on January 17, 1997 (62 FR 2612).

B. 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 this interim rule prior to affording the public an opportunity to comment. This interim rule amends the DFARS to fully implement 10 U.S.C. 2410(a), as amended by Section 2301 of FASA. 10 U.S.C. 2410(a) provides that a request for equitable adjustment to contract terms or requests for relief under Pub. L. 85-804, that exceeds the simplified acquisition threshold, may not be paid unless the contractor certifies that the request is made in good faith and that the supporting data are accurate and complete. Immediate publication of an interim rule is necessary to implement the requirements of 10 U.S.C. 2410(a) pertaining to requests for equitable adjustment. Requirements pertaining to requests for relief under Public Law 85-804 have been implemented in the Federal Acquisition Regulation (FAR). However, the requirements pertaining to requests for equitable adjustment apply only to Department of Defense contracts and are not implemented in the FAR.

C. Regulatory Flexibility Act

This interim rule may 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 it is estimated that approximately 88 percent of the

contractors submitting requests for equitable adjustment between \$100,000 and \$500,000 (above the simplified acquisition threshold and below the cost or pricing data threshold) may be small businesses. Therefore, an Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows: The objective of this rule is to implement 10 U.S.C. 2410(a), which requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The primary impact of the rule relates to requests in the range of \$100,000 to \$500,000, because requests in excess of \$500,000 generally require submission of cost or pricing data and certification thereof. Historically, many of the firms requesting equitable adjustment in amounts of \$100,000 to \$500,000 have been construction contractors. It is estimated that the rule will affect approximately 330 small entities annually. Accounting skills will be necessary to provide the cost data to support the certification. There are no Federal rules that duplicate, overlap, or conflict with the rule. The rule minimizes the impact on small entities, because it only applies to requests exceeding the simplified acquisition threshold, and because the certification has been limited to that specifically required by 10 U.S.C. 2410(a).

A copy of the analysis may be obtained from the address specified herein. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97-D302 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) applies because the interim rule contains new information collection requirements. Under the emergency processing provisions of 44 U.S.C. 3507(j) as implemented at 5 CFR 1320.13, the Office of Management and Budget (OMB) has granted emergency approval of the information collection requirement through August 31, 1997, under OMB Clearance Number 0704-0397. The OMB approval required under 44 U.S.C. 3507(a)(2) will be obtained prior to publication of the final rule.

1. *Comments:* Comments are invited. Particular comments are solicited on:

a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. The accuracy of the agency's estimate of the burden of the information collection, including the validity of the methodology and assumption used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or forms of information technology.

2. *Title, Associated Form, and OMB Number:* Contract Modifications—Defense Federal Acquisition Regulation Supplement Part 243 and Associated Clauses at 252.243; OMB Number 0704-0397.

3. *Needs and Uses:* The information collection required by the clause at 252.243-7002, Certification of Requests for Equitable Adjustment, is required by 10 U.S.C. 2410(a). The information is used by DoD contracting officers and auditors to evaluate requests for equitable adjustment.

4. *Affected Public:* Businesses or other for profit or not-for-profit entities.

5. *Annual Burden Hours:* 3,850.

6. *Number of Respondents:* 575.

7. *Responses Per Respondent:* 1.

8. *Number of Responses:* 575.

9. *Average Burden Per Response:* 6.7 hours.

10. *Frequency:* On occasion.

11. *Supplementary Information:* The clause at DFARS 252.243-7002 requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete, and to provide full disclosure of all relevant facts in support of the requested adjustment.

List of Subjects in 48 CFR Parts 235, 243, and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 235, 243, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 235, 243, and 252 continues to read as follows:

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

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.7006 [Amended]

2. Section 235.7006 is amended in paragraph (d), in the Exhibit-Research and Development Streamlined Contract Format, by adding at the end of Part II, Section I, the entry "(I.211) 252.243-7002 Certification of Requests for Equitable Adjustment".

PART 243—CONTRACT MODIFICATIONS

3. Section 243.204-70 is added to read as follows:

243.204-70 Certification of requests for equitable adjustment.

(a) A request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold may not be paid unless the contract certifies the request in accordance with the clause at 252.243-7002.

(b) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met (see example in FAR 15.804-2(a)(1)(iii)).

4. Section 243.205-72 is added to read as follows:

243.205-72 Certification of requests for equitable adjustment.

Use the clause at 252.243-7002, Certification of Requests for Equitable Adjustment, in solicitations and contracts estimated to exceed the simplified acquisition threshold.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 [Amended]

5. Section 252.212-7001 is amended by revising the clause date to read "(JUL 1997)"; and in paragraph (b) by adding, in numerical order, the entry "____ 252.243-7002 Certification of Requests for Equitable Adjustment (10 U.S.C. 2410)".

6. Section 252.243-7002 is added to read as follows:

252.243-702 Certification of Requests for Equitable Adjustment.

As prescribed in 243.205-72, use the following clause:

Certification of Requests for Equitable Adjustment (July 1997)

(a) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(b) The certification in paragraph (a) of this clause requires full disclosure of all relevant facts, including—

(1) Cost or pricing data if required in accordance with FAR 15.804-2; and

(2) Actual cost data and data to support any estimated costs, even if cost of pricing data are not required.

(c) The certification requirement in paragraph (a) of this clause does not apply to—(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or (2) Final adjustments under an incentive provision of the contract.

(d) The amount requested shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(End of clause)

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DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 97-D023]

Defense Federal Acquisition Regulation Supplement; Designation of Hong Kong

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative.

EFFECTIVE DATE: July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131. Telefax (703) 602-0350. Please cite DFARS Case 97-D023.