

using the following formula; the accounts listed shall be allocated pursuant to paragraph (c) of this section: [Return on Investment attributable to

COE Category 3 – Account 7340 – Account 7500 – Account 7210] × [Federal Income Tax Rate ÷ (1 – Federal Income Tax Rate)].

10. On page 2128, in the first column, in § 54.303, in paragraph (b)(1) revise to read as follows:

(b) * * *

(1) To calculate the unadjusted base-level of Long Term Support for 1998, the Administrator shall calculate the difference between the projected Common Line revenue requirement of association Common Line tariff participants projected to be recovered in 1997 and the sum of end user common line charges and the 1997 projected revenue recovered by the association Carrier Common Line charge as calculated pursuant to § 69.105(b)(2) of this chapter.

11. On page 2130, in the third column, in § 54.511, in paragraph (c)(1), in lines 7 and 8, remove the phrase “competitive bid” and change the reference from “§ 54.504(a)” to “§ 54.504(a), (b)(3), and (b)(4)”; in paragraph (c)(1)(i), in line 3, add the word “of” between “life” and “the contract”; and in paragraph (c)(1)(ii), in line 7, remove the phrase “that were provided” and add, in its place, “that are provided”.

12. On page 2131, in the first column, in § 54.518, in the section heading remove the word “Wide” and add, in its place “Support for wide”.

13. On page 2131, in the first column, in § 54.519, in paragraph (a)(3), remove the phrase “Make a good faith effort” and add, in its place, “Take reasonable steps”.

14. On page 2131, in the second column, in § 54.604, in paragraph (a), in line 5, remove the phrase “service provider” and add, in its place, “telecommunications carrier”.

15. On page 2131, in the third column, in § 54.604, in paragraph (c), in the last line, remove the phrase “service providers” and add, in its place, “telecommunications carriers”.

16. On page 2132, in the second column, in § 54.703, in the first sentence of paragraphs (b) and (c) remove the phrase “The following entities will not be required to contribute on the basis of revenues derived from the provision of interstate telecommunications” and add, in its place, “The following entities will not be required to contribute to universal service” and in line 9 of paragraphs (b) and (c) remove the phrase “of video programming” after the word “broadcasters”.

17. On page 2132, in the second column, in § 54.703, in paragraph (c), in line 9, remove the comma before “systems integrators” and add in its place, a semi-colon.

Federal Communications Commission.

Lisa Gelb,

Chief, Accounting Policy Division.

[FR Doc. 98–13239 Filed 6–18–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 213, 219, 252, and 253

[DFARS Case 90–D011]

Defense Federal Acquisition Regulation Supplement; Direct Award of 8(a) Contracts

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 a Memorandum of Understanding (MOU) dated May 6, 1998, between the Small Business Administration (SBA) and DoD. The MOU streamlines the processing procedures for contract awards under the SBA’s 8(a) Program.

DATES: Effective date: June 19, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 18, 1998, to be considered in the formulation of the final rule.

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

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 98–D011 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98–D011 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberman, (703) 601–0131.

SUPPLEMENTARY INFORMATION:

A. Background

The SBA’s 8(a) Program, named for the section of the Small Business Act (Pub. L. 85–536, as amended) which it implements, helps small disadvantaged

businesses compete for Federal contracts. The program authorizes the SBA to enter into all types of contracts with other agencies and award subcontracts for performing these contracts to firms eligible for program participation. The SBA’s subcontractors are referred to as “8(a) contractors.”

Section 8(a) requires the SBA to function as an intermediary for 8(a) contracts, but permits the SBA to delegate its authority through special agreements. One such agreement is the Memorandum of Understanding dated May 6, 1998, between SBA and DoD. The MOU streamlines the processing procedures for contract awards under the SBA’s 8(a) Program by authorizing DoD to award contracts directly to 8(a) contractors; by reducing SBA’s response time to a DoD offering and for making an eligibility determination; and by providing a number of other changes to procurement procedures under the 8(a) Program. This interim rule amends Parts 213, 219, 252, and 253 of the DFARS to implement the MOU.

B. Regulatory Flexibility Act

The interim rule is not expected 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 only affects the administrative process established for award of 8(a) contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. 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 5 U.S.C. 601, *et seq.* (DFARS Case 98–D011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require Office of Management and Budget approval 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 this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement a MOU dated May 6, 1998, between the SBA and DoD. The MOU streamlines the processing procedures for contract awards under the SBA’s 8(a)

Program by authorizing DoD to award contracts directly to 8(a) concerns; by reducing SBA's response times; and by providing a number of other changes to procurement procedures under the 8(a) Program. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 213, 219, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 213, 219, 252, and 253 are amended as follows:

1. The authority citation for 48 CFR parts 213, 219, 252, and 253 continues to read as follows:

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

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Subpart 213.70 is added to read as follows:

Subpart 213.70—Simplified Acquisition Procedures Under the 8(a) Program

Sec.

213.7001 Policy.

213.7002 Procedures.

213.7003 Purchase orders.

213.7003-1 Obtaining contractor acceptance and modifying purchase orders.

213.7003-2 Contract clauses.

Subpart 213.70—Simplified Acquisition Procedures Under the 8(a) Program

213.7001 Policy.

For sole source acquisitions under the 8(a) Program, contracting officers may use the procedures established in the Memorandum of Understanding cited in 219.800.

213.7002 Procedures.

For acquisitions that are otherwise appropriate to be conducted using procedures set forth in this part, and also eligible for the 8(a) Program, contracting officers may use—

(1)(i) For sole source purchase orders not exceeding the simplified acquisition threshold, the procedures in 219.804-2(2); or

(ii) For other types of acquisitions, the procedures in subpart 219.8, excluding the procedures in 219.804-2(2); or

(2) The procedures for award to the Small Business Administration in FAR subpart 19.8.

213.7003 Purchase orders

213.7003-1 Obtaining contractor acceptance and modifying purchase orders.

The contracting officer need not obtain a contractor's written acceptance of a purchase order or modification of a purchase order for an acquisition under the 8(a) Program pursuant to 219.804-2(2).

213.7003-2 Contract clauses.

Use the clauses prescribed in 219.811-3(1) and (3) for purchase orders under the 8(a) Program pursuant to the Memorandum of Understanding cited in 219.800.

PART 219—SMALL BUSINESS PROGRAMS

3. Section 219.800 is added to read as follows:

219.800 General.

(a) By Memorandum of Understanding (MOU) dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense for Acquisition and Technology its authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under paragraph 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. This authority is being delegated and redelegated on a pilot test basis and shall expire on May 5, 2001. Notwithstanding this MOU, contracting officers may elect to award the contract pursuant to the provisions of FAR subpart 19.8.

(b) Awards under the MOU may be awarded directly to the 8(a) participant on either a sole source or competitive basis.

(c) Contracts awarded under the MOU may be awarded directly to the 8(a) participant. An SBA signature on the contract is not required.

4. Sections 219.804-2, 219.804-3, 219.805, 219.805-2, 219.806, 219.808, 219.808-1, 219.811, 219.811-1, 219.811-2, 219.811-3, and 219.812 are added to read as follows:

219.804-2 Agency offering.

(1) For requirements processed under the MOU cited in 219.80 (but see paragraph (2) of this subsection for procedures related to purchase orders that do not exceed the simplified acquisition threshold), the notification to the SBA shall clearly indicate that the requirement is being processed under the MOU. All notifications should be submitted in writing, using facsimile or electronic mail, when possible, and shall specify that—

(i) Under the MOU, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii) (A) For sole source requirements, an SBA acceptance shall include a size verification and a determination of the 8(a) firm's eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the MOU cited in 219.800, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the contracting officer shall establish the prices, terms, and conditions with the 8(a) contractor and shall prepare a purchase order consistent with the procedures in part 213 and FAR part 13, including the applicable clauses required by this subpart. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer shall provide to the cognizant SBA Business Opportunity Specialist, using facsimile or electronic mail—

(i) A copy of the purchase order; and

(ii) A notice stating that the purchase order is being processed under the MOU. The notice also shall indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

219.804-3 SBA acceptance.

For requirements processed under the MOU cited in 219.800, SBA's acceptance is required within 5 working days (but see 219.804-2(2) for purchase

orders that do not exceed the simplified acquisition threshold).

219.805 Competitive 8(a).

219.805-2 Procedures.

(c) For requirements processed under the MOU cited in 219.800—

(i) For sealed bid and negotiated acquisitions, the SBA will determine the eligibility of the firms and will advise the contracting officer within 2 working days after its receipt of a request for an eligibility determination; and

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on as many as three of the most highly rated offerors.

219.806 Pricing the 8(a) contract.

For requirements processed under the MOU cited in 219.800—

(1) The contracting officer shall obtain cost or pricing data from the 8(a) contractor, if required by FAR subpart 15.4; and

(2) SBA concurrence in the negotiated price is not required. However, except for purchase orders not exceeding the simplified acquisition threshold, the contracting officer shall notify the SBA prior to withdrawing a requirement from the 8(a) Program due to failure to agree on price or other terms and conditions.

219.808 Contract negotiations.

219.808-1 Sole source.

For requirements processed under the MOU cited in 219.800—

(1) The agency may negotiate directly with the 8(a) contractor. The contracting officer is responsible for initiating negotiations;

(2) The 8(a) contractor is responsible for negotiating within the time established by the contracting officer;

(3) If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the contracting officer may, after notifying the SBA, proceed with the acquisition from other sources;

(4) If requested by the 8(a) contractor, the SBA may participate in negotiations; and

(5) SBA approval of the contract is not required.

219.811 Preparing the contracts.

219.811-1 Sole source.

(a) Awards under the MOU cited in 219.800 may be made directly to the 8(a) contractor and, except as provided in paragraph (b) of this subsection and in 219.811-3, award documents shall be prepared in accordance with procedures established for non-8(a) contracts, using any otherwise authorized award forms.

The "Issued by" block shall identify the awarding DoD contracting office. The contractor's name and address shall be that of the 8(a) participant.

(b) Use the following alternative procedures for direct awards made under the MOU cited in 219.800:

(i) Cite 10 U.S.C. 2304(c)(5) as the authority for use of other than full and open competition;

(ii) Include the clause at 252.219-7009, which allows for direct award to the 8(a) contractor, and identify the cognizant SBA district office for the 8(a) contractor;

(iii) No SBA contract number is required; and

(iv) Do not require an SBA signature on the award document.

219.811-2 Competitive.

Awards made under the MOU cited in 219.800 shall be prepared in accordance with 219.811-1.

219.811-3 Contract clauses.

(1) Use the clause at 252.219-7009, Section 8(a) Direct Award, instead of the clauses at FAR 52.219-11, Special 8(a) Contract Conditions, FAR 52.219-12, Special 8(a) Subcontract Conditions, and FAR 52.219-17, Section 8(a) Award, in solicitations and contracts processed in accordance with the MOU cited in 219.800.

(2) Use the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with 252.219-7010, Alternate A, in solicitations and contracts processed in accordance with the MOU cited in 219.800.

(3) Use the clause at 252.219-7011, Notification to Delay Performance, in solicitations and purchase orders issued in accordance with 219.804-2(2).

219.812 Contract administration.

(d) Awards under the MOU cited in 219.800 are subject to Section 407 of Pub. L. 100-656. These contracts include the clause at 252.219-7009, Section 8(a) Direct Award, which requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 252.219-7009, 252.219-7010, and 252.219-7011 are added to read as follows:

252.219-7009 Section 8(a) Direct Award.

As prescribed in 219.811-3(1), use the following clause:

Section 8(a) Direct Award (Jun 1998)

(a) This contract is issued as a direct award between the contracting office and the 8(a)

Contractor pursuant to the Memorandum of Understanding dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA is not a party to this contract. SBA does retain responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

[To be completed by the Contracting Officer at the time of award]

(b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration functions to a contract administration office.

(c) The Contractor agrees that—

(1) It will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.308), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Pub. L. 100-656, transfer of ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and

(2) It will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.
(End of clause)

252.219-7010 Alternate A.

Alternate A (Jun 1998)

As prescribed in 219.811-3(2), substitute the following paragraph (c) for paragraph (c) of the clause at FAR 52.219-18:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

252.219-7011 Notification to Delay Performance.

As prescribed in 219.811-3 (3), use the following clause NOTIFICATION TO DELAY PERFORMANCE (JUN 1998)

The Contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the Contractor receives notification from the Small Business Administration that

it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered canceled.

(End of clause)

PART 253—FORMS

6. Section 253.204–70 is amended by revising paragraph (d)(5)(iv)(B)(2) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

- (d) * * *
- (5) * * *
- (iv) * * *
- (B) * * *

(2) *Code B—Section 8(a)*. Enter code B if the contract was awarded to—

- (i) The Small Business Administration (SBA) under Section 8(a) of the Small Business Act (FAR subpart 19.8); or
- (ii) An 8(a) contractor under the direct award procedures at 219.811.

* * * * *

7. Section 253.204–71 is amended by revising paragraph (g)(2)(ii)(A) to read as follows:

253.204–71 DD Form 1057, Monthly Contracting Summary of Actions \$25,000 or Less.

* * * * *

- (g) * * *
- (2) * * *
- (ii) * * *

(A) Block E2a, Through SBA-Section 8(a). Enter actions with the Small Business Administration pursuant to Section 8(a) of the Small Business Act (FAR subpart 19.8) or under the 8(a) direct award procedures at 219.811.

* * * * *

[FR Doc. 98–16282 Filed 6–18–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1, Amdt. 1–293]

Organization and Delegation of Powers and Duties; Delegation to the Assistant Secretary for Budget and Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the

Assistant Secretary for Budget and Programs the authority to make appropriate Congressional notification pursuant to The National Energy Conservation Policy Act, as amended (42 U.S.C. 8287 et seq.). The Act requires the agency head to provide Congressional notification for awards of Energy Savings Performance Contracts (ESPCs) with cancellation ceilings in excess of \$750,000. In order that the Code of Federal Regulations reflect the delegation to the Assistant Secretary for Budget and Programs regarding Congressional notification for ESPC awards, an addition to section 1.58 of Title 49 is necessary.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Lesley Field, Office of Acquisition and Grant Management, Department of Transportation, (202) 366–4960, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Pursuant to The National Energy Conservation Policy Act, the head of the agency is required to provide Congressional notification for ESPCs with cancellation ceilings in excess of \$750,000 (42 U.S.C. 8287(a)(2)(D)). The Act authorizes federal agencies to enter into multiyear ESPCs for a period not to exceed 25 years, without funding of cancellation charges before cancellation, provided certain conditions are met. One of these conditions is that appropriate notice be given to Congress 30 days prior to award of a contract that contains a cancellation ceiling in excess of \$750,000.

Delegating the notification function to the Assistant Secretary for Budget and Programs will expedite the notification process. Since the notification in question is to the Appropriation Committees and Authorizing Committees, the Budget Office is well situated to implement the notification requirement as it handles contacts with these committees on many other Departmentwide budgetary issues.

This rule is being published as a final rule and is being made effective on the date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, the Secretary finds good cause, under 5 U.S.C. 553(b) and (d)(3), that notice, and public procedure on the notice are unnecessary and that this rule should be made effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub.L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.58 [Amended]

2. Section 1.58 is amended by adding a new paragraph (h) to read as follows:

§ 1.58 Delegations to Assistant Secretary for Budget and Programs.

The Assistant Secretary for Budget and Programs is delegated authority to:

* * * * *

(h) Provide Congressional Notification for Energy Savings Performance Contracts (ESPCs) with cancellation ceilings in excess of \$750,000, pursuant to the National Energy Conservation Policy Act, as amended, 42 U.S.C. 8287 et seq.

Issued in Washington, DC this 15th day of June, 1998.

Rodney Slater,

Secretary of Transportation.

[FR Doc. 98–16281 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1, Amdt. 1–294]

Organization and Delegation of the Powers and Duties Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation delegates to the Commandant, United States Coast Guard, the authority contained in the National Defense Authorization Act for Fiscal Year 1998 to allow personnel to participate in management of certain non-Federal entities. Participation under this authority includes acting as an officer or voting board member. The term “Non-Federal entities” includes, but is not limited to, the following organizations: Coast Guard Mutual Assistance, the National Collegiate Athletics Association, the Coast Guard Academy Athletic Association, the Freedom Football Conference, the New England Women’s and Men’s Athletic Conference, the Pilgrim Conference, the