

has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

6. In this *Notice of Proposed Rule Making*, we propose to delete an unused non-Government allocation for the radionavigation service at 31.8–32.3 GHz in order to protect existing Government operations in this band from harmful interference. In addition, we tentatively conclude that the remaining portion of the existing non-Government radionavigation allocation at 32.3–33.4 GHz will provide sufficient spectrum for future non-Government radionavigation services, if and when such services develop. Accordingly, we hereby certify that the proposed deletion of the non-Government radionavigation allocation at 31.8–32.3 GHz will not have a significant economic impact on a substantial number of small entities. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice of Proposed Rule Making*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 87

Communications equipment, Radio.
Federal Communications Commission.

Magalie Roman Salas,
Secretary.

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DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 98–D019]

Defense Federal Acquisition Regulation Supplement; Restructuring Savings Repricing Clause

AGENCY: Department of Defense (DoD).
ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that contracting officers should consider using a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period

between the time a business combination is announced and the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before January 29, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, 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–D019 in all correspondence related to this issue. E-mail correspondence should cite DFARS Case 98–D019 in the subject line.

FOR FURTHER INFORMATION CONTACT:
Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Since the late 1980's, defense contractors have been restructuring their business operations to increase efficiencies and become more competitive in the defense marketplace. Many of the restructuring activities result from business combinations (such as mergers or acquisitions), and often lead to reduced overall costs and future savings. However, a significant amount of time may lapse between the announcement of the merger or acquisition and the point at which the contractor reflects the restructuring savings in reduced overhead rates and contract prices. During this uncertain period, fixed-price contracts without a repricing or reopener clause are risky because, once awarded, they cannot be repriced. Projected restructuring savings are difficult to estimate and may be significant in amount.

This rule proposes to amend DFARS 231.205–70, External restructuring costs, to specify that contracting officers should consider including a downward-only repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between the time a business combination is announced and the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring. The repricing clause should ensure that DoD receives its appropriate share of restructuring savings.

B. Regulatory Flexibility Act

The proposed 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule. 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 subpart 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–D019), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of subjects in 48 CFR Part 231

Government procurement.

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

Therefore, 48 CFR part 231 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 231 continues to read as follows:

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

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–70 is amended by adding paragraph (f) to read as follows:

231.205–70 External restructuring costs.

* * * * *

(f) *Contracting officer responsibilities.*

(1) The contracting officer, in consultation with the cognizant ACO, should consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between—

(i) The time a business combination is announced; and

(ii) The time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

(2) The repricing clause should provide for downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring savings.

(3) The decision to use a repricing clause will depend upon the particular circumstances involved, including—

- (i) When the restructuring will take place;
- (ii) When restructuring savings will begin to be realized;
- (iii) The contract performance period; and
- (iv) The size of the potential dollar impact on the contract.

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DEPARTMENT OF STATE

48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 611, 613, 614, 615, 616, 617, 619, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 641, 642, 643, 644, 645, 646, 647, 649, 652, 653

[Public Notice No. 2925]

RIN 1400-AA71

Department of State Acquisition Regulation (DOSAR)

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule is being issued for comment in accordance with Section 4301 of the Federal Acquisition Reform Act of 1996 (Pub. L. 104-106). Section 4301 requires the elimination of certification requirements from the Department of State Acquisition Regulation (DOSAR) that are not specifically imposed by statute. In addition, this proposed rule adds one new certification required by statute and one new certification not required by statute but justified in accordance with section 29 of Public Law 104-106. This proposed rule also eliminates internal coverage from the codified section of the DOSAR. Finally, the proposed rule contains miscellaneous amendments and corrections needed to bring the DOSAR in line with recent changes in the Federal Acquisition Regulation.

DATES: Public comments must be received by January 29, 1999.

ADDRESSES: Comments may be sent to: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street NW, Suite 603, State Annex Number 6, Washington, DC 20522-0602; e-mail address: ginesgg@state.gov.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, telephone (703) 516-1691 or at the e-mail address specified above.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with Section 4301 of the Federal Acquisition Reform Act of 1996, the Department of State proposes to remove several certifications from the DOSAR. They are: 652.203-71, Certification Regarding Federal Employment (requirement not based in statute); 652.223-70, Estimates of the Total Percentage of Recovered Materials to be Utilized in the Performance of the Contract (superseded by FAR 52.223-9); and, 652.223-71, Certification of Minimum Content Actually Utilized in the Performance of the Contract (also superseded by FAR 52.223-9).

In conjunction with the review of the DOSAR to eliminate any certifications not based in statute, the Department looked at all current DOSAR provisions and clauses to determine if they could be eliminated or revised. In addition, the Department proposes to add several new certifications and clauses. Accordingly, the Department proposes to take the following actions:

- Eliminate the clause at 652.203-70, Prohibition Against the Use of Federal Employees.
- Eliminate the clauses at 652.204-70, Security Requirements, and 652.204-71, Security Requirements—Personnel. Both of these clauses implement requirements for contractors that have access to classified information. However, the Department falls under the National Industrial Security Program (NISP), which establishes a program to safeguard Federal Government classified information that is released to contractors. FAR 4.404 prescribes clauses for use by agencies covered by the NISP. The Department has determined that the FAR coverage is adequate and the DOSAR language is no longer required. The associated DOSAR prescription at 604.404-70 is also removed.
- Revise the provision at 652.206-70, Competition Advocacy/Ombudsman, to better explain the role of the Acquisition Ombudsman.
- Renumber the clause at 652.214-70, Notices, to 652.243-70. The associated prescription at 614.201-7-70(b) is also removed, and a new prescription is found at 643.104-70. The change was made because the clause deals with contract modifications, and is applicable to all contracts, not just those awarded using sealed bidding.
- Revise the provision at 652.214-71, Authorization to Perform, to clarify that (1) the requirement to obtain licenses, permits, etc. is in accordance with the date specified in the solicitation, (e.g., the date may be after contract award);

and (2) the requirement to obtain the licenses, permits, etc. applies only to the parties who will actually be performing the work, i.e., prime contractor, subcontractors or joint venture partner.

- Revise the clause at 652.216-71, Price Adjustment, for clarification purposes.
- Add a new clause at 652.219-71, Section 8(a) Direct Awards, to implement the Memorandum of Understanding between the Department and the Small Business Administration to allow for direct awards to contractors under the 8(a) Program. Subpart 619.8 is also revised accordingly.
- Eliminate the provisions and clauses at 652.223-72, Use of Double-Sided Copying in the Submission of Bids and Proposals; 652.223-73, Use of Double-Sided Copying in the Submission of Reports; 652.223-74, Use of Fly Ash as a Partial Replacement for Cement and Concrete; 652.223-75, Use of Recovered Materials in Building Insulation Products; 652.223-76, Use of Lubricating Oils Containing Re-Refined Oils; 652.223-77, Use of Retread Tires; and, 652.223-78, Use of Recovered Materials in Paper and Paper Products. These provisions and clauses have been superseded by FAR language incorporated in FACs 90-27 and 97-1. DOSAR Subpart 623.4 is revised in its entirety to conform to the new FAR requirements.
- Add a new certification at 652.225-70, Arab League Boycott of Israel, and a new clause at 652.225-71, Section 8(a) of the Export Administration Act of 1979, As Amended. This certification and clause are required by Section 565 of the Fiscal Year 94/95 Foreign Relations Authorizations Act (Pub. L. 103-236), which has continuing effect. A new Subpart 625.70 is also added.
- Add a new certification at 652.226-70, Certification of Status as a Minority Business Enterprise. This certification is not statutorily based. However, Federal agencies are required to report to the Minority Business Development Agency information concerning awards to minority-owned businesses, both large and small. Since this information is not readily available, this certification represents the most logical manner in which to gather this information. A justification for including this certification has been approved by the agency head. A new Part 626 is also added.
- Eliminate the clause at 652.228-73, Waiver of the Defense Base Act. The Department received a waiver from the Department of Labor for service contracts performed overseas for employees who are not U.S. citizens or