

however, to suitable dredged material from the greater Wilmington, North Carolina vicinity.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12866, EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: February 8, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

In consideration of the foregoing, subchapter H of chapter I of title 40 is proposed to be amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (h)(20) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(20) New Wilmington, North Carolina; Ocean Dredged Material Disposal Site.

(i) Location: 33°46' N., 78°02.5' W.; 33°46' N., 78°01' W.; 33°41' N., 78°01' W.; 33°41' N., 78°04' W.

(ii) Size: Approximately 9.4 square nautical miles.

(iii) Depth: Ranges from 35–52 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Wilmington, North Carolina vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

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DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 216

[DFARS Case 2001-D017]

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchase of Services Under Multiple Award Contracts

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments and notice of public meeting.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 803 of the National Defense Authorization Act for Fiscal Year 2002. Section 803 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts. In addition to the request for written comments on this proposed rule, DoD will hold one or more public meetings to hear the views of interested parties.

DATES: *Submission of comments:* Written comments on the proposed rule should be submitted to the address shown below on or before May 6, 2002, to be considered in the formation of the final rule.

Public meeting: The first public meeting will be held at the address shown below on April 29, 2002, from 12 p.m. to 3 p.m., local time.

ADDRESSES: *Submission of comments:* Respondents are encouraged to submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2001-D017 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2001-D017.

As a test, public comments will be posted on the World Wide Web as they are received. Interested parties may view the public comments at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

Public meeting: The public meeting will be held in Room C-43, Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Proposed rule information: Ms. Susan Schneider, (703) 602-0326.

Public meeting information: Ms. Melissa Rider, (703) 695-1098.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS Parts 208 and 216 to implement section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107). Section 803 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts.

The Director of Defense Procurement is sponsoring a public meeting to discuss the proposed rule and hear the views of interested parties on what they believe to be the key issues pertaining to use of Federal Supply Schedules, Governmentwide acquisition contracts, multiple agency contracts, and multi-agency indefinite-delivery-indefinite-quantity contracts for the acquisition of services. Possible issues include (but are not limited to): procedures for establishing the basic contractual instruments; ordering procedures; ability to maintain a competitive environment; and suitability of current Government training on multiple award contracts. Subsequent meetings may be held, depending on the level of interest shown by the general public at the

initial meeting. Meeting dates and other pertinent information will be published on the Defense Procurement Web site at www.acq.osd.mil/dp.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

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 the rule clarifies and strengthens existing FAR requirements for competition in the placement of orders under multiple award contracts, and makes no change to the preferences afforded small business concerns under FAR 8.404(b)(6). Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001-D017.

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 208 and 216

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR parts 208 and 216 as follows:

1. The authority citation for 48 CFR parts 208 and 216 continues to read as follows:

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

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. The heading of Subpart 208.4 is revised to read as follows:

Subpart 208.4—Federal Supply Schedules

3. Section 208.404 is amended by adding paragraph (b) to read as follows:

208.404 Using schedules.

* * * * *

(b) *Ordering procedures for optional use schedules—*

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* The procedures at FAR 8.404(b)(2), regarding review of catalogs or pricelists of at least three schedule contractors, do not apply to orders for services exceeding \$100,000. Instead, use the procedures at 208.404–70.

(3) *Orders exceeding the maximum order threshold.*

(i) For orders for services exceeding \$100,000, use the procedures at 208.404–70 in addition to the procedures at FAR 8.404(b)(3)(i).

(7) *Documentation.* For orders for services exceeding \$100,000, use the procedures at 208.404–70 in addition to the procedures at FAR 8.404(b)(7).

4. Section 208.404–70 is added to read as follows:

208.404–70 Additional ordering procedures for services.

(a) This subsection implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107).

(b) Each order for services exceeding \$100,000 must be made on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iii) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.

(c) An order for services exceeding \$100,000 is made on a competitive basis only if—

(1) The contracting officer—

(i) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor must perform and the basis upon which the contracting officer will make the selection, to all contractors offering such services under the multiple award schedule; and

(ii) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered; or

(2) The contracting officer provides the notice described in paragraph (c)(1)(i) of this subsection to as many contractors as practicable and—

(i) Receives offers from at least three qualified contractors; or

(ii) Determines in writing that no additional qualified contractors could be identified despite reasonable efforts to do so.

(d) Single and multiple blanket purchase agreements (BPAs) may be established against Federal Supply Schedules if the contracting officer—

(1) Follows the procedures in paragraphs (b) and (c) of this subsection; and

(2)(i) For a single BPA, defines the tasks and establishes a firm-fixed price for individual tasks or services identified in the statement of work; or

(ii) For multiple BPAs, forwards the statement of work and the selection criteria to all BPA awardees before placing orders against the BPAs. (See FAR 8.404(a) and (b)(4), and paragraph (b) of GSA's ordering procedures for services at http://www.gsa.gov/Portal/content/offerings_content.jsp?contentOID=116992&contentType=1004.)

PART 216—TYPES OF CONTRACTS

5. Section 216.501–1 is added to read as follows:

216.501–1 Definition.

Multiple award contract, as used in this subpart, means—

(1) A multiple award task order contract entered into in accordance with FAR 16.504(c); or

(2) Any other indefinite delivery, indefinite quantity contract that an agency enters into with two or more sources under the same solicitation.

6. Section 216.505–70 is added to read as follows:

216.505–70 Orders for services under multiple award contracts.

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107); and

(2) Applies to orders for services exceeding \$100,000 placed under multiple award contracts, instead of the procedures at FAR 16.505(b)(1) (see Subpart 208.4 for procedures applicable to orders placed against Federal Supply Schedules).

(b) Each order for services exceeding \$100,000 must be made on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.

(c) An order for services exceeding \$100,000 is made on a competitive basis only if the contracting officer—

(1) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor must perform and the basis upon which the contracting officer will make the selection, to all contractors offering such services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) When using the procedures in this subsection—

(1) The contracting officer should keep submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations; and

(3) The competition requirements in FAR part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer must—

(i) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(ii) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(iii) Tailor the procedures to each acquisition;

(iv) Include the procedures in the solicitation and the contract; and

(v) Consider price or cost under each order as one of the factors in the selection decision.

(e) The contracting officer should consider the following when developing the procedures required by paragraph (d)(3) of this subsection:

(1) Past performance on earlier orders under the contract, including quality, timeliness, and cost control.

(2) Potential impact on other orders placed with the contractor.

(3) Minimum order requirements.

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