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IN REPLY
REFER TO

MMPPP
PROCLTR 97-01

JAN 14 1997

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Restructuring Costs

This PROCLTR provides initial implementation of Section 8115 of the FY 97 National Defense Appropriations Act (Public Law 104-208). This section limits the use of FY 97 appropriated funds for reimbursing external restructuring costs associated with a business combination undertaken by a defense contractor unless specific cost effective measurement criteria are met. The statutory restrictions have been implemented in DFARS 231.205-70, External restructuring costs. A copy of the change was forwarded with the December 6, 1996, memorandum from the Director, Defense Procurement (Attachment 1). A copy of the interim rule published the same date in the Federal Register is at Attachment 2.

This PROCLTR is effective immediately and expires upon publication of the DFARS change in a future Defense Acquisition Circular, but in any event, not later than one year from its issue date. Questions may be directed to Mr. Jerry Gilbert, MMPPP, 703-767-1350, DSN 427-1350, or via internet to jerry_gilbart@hq.dla.mil.

Attachments

ROBERT L. MOLINO
Executive Director
(Procurement)



ACQUISITION AND
TECHNOLOGY

DP (DAR)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

December 6, 1996

In reply refer to
DFARS Case: 96-D334
D. L. 96-022

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Restructuring Costs

We have amended Part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208). Section 8115 restricts the use of fiscal year 1997 appropriated funds to reimburse external restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met.

This interim DFARS rule is effective immediately and will be published in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir



**RESTRUCTURING COSTS
DFARS CASE 96-D334**

SUBPART 231.2--CONTRACTS WITH COMMERCIAL ORGANIZATIONS

231.205 Selected costs.

*** * * * ***

231.205-70 External restructuring costs.

(a) Scope.

This subsection prescribes policies and procedures for allowing contractor external restructuring costs when net savings would result for DoD. This subsection also implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337) [and Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208)].

*** * * * ***

(c) Limitations on cost allowability.

*** * * * ***

[(3) Additionally, for business combinations that occur after September 30, 1996, no fiscal year 1997 appropriated funds may be obligated or expended to reimburse a contractor for restructuring costs associated with external restructuring activities unless--

- (i) The audited savings for DoD resulting from the restructuring will exceed the costs allowed by a factor of at least two to one; or**
- (ii) The savings for DoD resulting from the restructuring will exceed the costs allowed, and the Secretary of Defense determines that the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.]**

(d) Procedures and ACO responsibilities.

As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall:

*** * * * ***

[(10) Consult with the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), when 231.205-70 (c) (3) (ii) applies.]

today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 21, 1996.

Chuck Clarke,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding the entry for Idaho in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Idaho

(a) Idaho Division of Environmental Quality: submitted on January 20, 1995, and supplemented on July 14, 1995, September 15, 1995, and January 12, 1996; interim approval effective on January 6, 1997; interim approval expires January 6, 1999.

(b) Reserved.

* * * * *

[FR Doc. 96-31121 Filed 12-5-96; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 96-D334]

Defense Federal Acquisition Regulation Supplement; Restructuring Costs

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 Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208) concerning the reimbursement of external restructuring costs associated with a business combination.

DATES: Effective date: December 6, 1996.

Comment date: Comments on the interim rule should be submitted in

writing to the address shown below on or before February 4, 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. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D334 in all correspondence related to this issue.

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

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 231.205-70, External restructuring costs, to implement Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208). Section 8115 restricts DoD from using fiscal year 1997 funds to reimburse external restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met. These conditions include either that (1) the audited savings for DoD resulting from the restructuring will be at least twice the costs; or (2) the savings for DoD will exceed the costs allowed and the Secretary of Defense determines that the business combination will result in the preservation of a critical capability that might otherwise be lost to the Department.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule implements Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208), which was effective upon enactment on September 30, 1996. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

C. 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 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. In addition, this rule only applies to those entities that incur restructuring costs associated with a business combination under contracts funded by fiscal year 1997 funds. 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 Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 96-D334 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting or recordkeeping requirements which 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 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 revising paragraph (a), and by adding paragraphs (c) (3) and (d) (10) to read as follows:

231.205-70 External restructuring costs.

(a) Scope. This subsection prescribes policies and procedures for allowing contractor external restructuring costs when net savings would result for DoD. This subsection also implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337) and Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208).

* * * * *

(c) * * *

(3) Additionally, for business combinations that occur after September 30, 1996, no fiscal year 1997 appropriated funds may be obligated or expended to reimburse a contractor for restructuring costs associated with external restructuring activities unless—

(i) The audited savings for DoD resulting from the restructuring will

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exceed the costs allowed by a factor of at least two to one; or

(ii) The savings for DoD resulting from the restructuring will exceed the costs allowed, and the Secretary of defense determines that the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(d) * * *
(10) Consult with the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), when 231.205-70(c)(3)(ii) applies.

* * * * *
[FR Doc. 96-31100 Filed 12-5-96; 8:45 am]
BILLING CODE 5000-04-M

48 CFR Parts 249 and 252

[DFARS Case 96-D320]

Defense Federal Acquisition Regulation Supplement; Notice of Termination

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 Section 824 of the National Defense Authorization Act for fiscal Year 1997 (Pub. L. 104-201). Section 824 streamlines the statutory requirements for providing notification to contractors regarding contract terminations or reductions that are expected to occur as a result of reduced funding levels under major defense programs.

EFFECTIVE DATE: December 6, 1996. Comments on the interim rule should be submitted in writing to the address shown below on or before February 4, 1997, to be considered in the formulation of the final rule.

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

Please cite DFARS Case 96-D320 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Laysner, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 824 of the National Defense Authorization Act for Fiscal Year 1997

(Pub. L. 104-201). Section 824 of Public Law 104-201 amends Section 4471 of Public Law 102-484 (10 U.S.C. 2501 note) to streamline requirements for providing notices to contractors and subcontractors that may be adversely affected by substantial reductions in funding levels under major defense programs. The changes include: (1) Elimination of the requirement for notices pertaining to funding reductions that may occur as a result of the submission of the President's budget; (2) elimination of the requirement for publication of notices of anticipated program termination or reduction in the Federal Register; and (3) an increase in the time period, from 45 to 60 days, within which contractors must provide notice of anticipated contract termination or reduction to affected subcontractors after receiving notice from the Government.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule implements Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201). Section 824 became effective upon enactment on September 23, 1996. This interim rule is necessary to ensure that DoD contracting activities become aware of the amended statutory requirements for providing notification to contractors regarding anticipated contract termination or reduction. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The 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 the rule revises requirements for providing notification to contractors and subcontractors regarding contract terminations or reductions that are expected to occur under major defense programs. An initial regulatory flexibility analysis has been prepared and is summarized as follows: This interim rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201). Section 824 streamlines the statutory requirements for providing notification to contractors and subcontractors

regarding contract terminations or reductions that are expected to occur as a result of reduced funding levels under major defense programs. The rule will apply to all large and small entities that have, under a major defense program, a prime contract, a first-tier subcontract of \$500,000 or more, or a lower-tier subcontract of \$100,000 or more, that is expected to be terminated or substantially reduced as a result of reduced funding levels in an appropriations act. It is not feasible to predict the number of small entities that may be affected. However, according to statistics from the DD Form 350 data base maintained by Department of Defense (DoD) Washington Headquarters Services, DoD awarded approximately 35,400 prime contracts exceeding \$100,000 to small entities during fiscal year 1995. This rule imposes no additional reporting, recordkeeping, or compliance requirements on offerors or contractors. This rule does not duplicate, overlap, or conflict with any other Federal rules. Consideration was given to delaying the notification requirements until the time of execution of the contract termination modification. However, this alternative would not ensure full compliance with the applicable statute, which requires DoD to notify its contractors of anticipated contract termination or reduction not later than 60 days after the enactment of an appropriations act. 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 Section 610 of the Act. Such comments should be submitted separately and cite DFARS Case 96-D320 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting or recordkeeping requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 249 and 252

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

Therefore, 48 CFR Parts 249 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 249 and 252 continues to read as follows:

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

PART 249—TERMINATION OF CONTRACTS

2. Section 249.7003 is revised to read as follows:

249.7003 Notification of anticipated contract terminations or reductions.

(a) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by termination or substantial reductions in major defense programs.

(b) Departments and agencies are responsible for establishing procedures to:

(1) Identify which contracts (if any) under major defense programs will be terminated or substantially reduced as a result of the funding levels provided in an appropriations act.

(2) Within 60 days of the enactment of such an act, provide notice of the anticipated termination or of substantial reduction in the funding of affected contracts)

(i) Directly to the Secretary of Labor; and

(ii) Through the contracting officer to each prime contractor.

(c) Use the clause at 25.249-7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.249-7002 is revised to read as follows:

252.249-7002 Notification of Anticipated Contract Termination or Reduction.

As prescribed in 249.7003(c), use the following clause:

NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION

(DEC 1996)

(a) Definitions.

Major defense program means a program that is carried out to produce or acquire a major system (as defined in 10 U.S.C. 2302(5)) (see also DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs).

Substantial reduction means a reduction of 25 percent or more in the total dollar value of funds obligated by the contract.

(b) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

(c) *Notice to employees and state and local officials.* Within 2 weeks after the Contracting Officer notifies the Contractor that contract funding will be terminated or substantially reduced, the Contractor shall provide notice of such anticipated termination or reduction to—

(1) Each employee representative of the Contractor's employees whose work is directly related to the defense contract; or

(2) If there is no such representative, each such employee;

(3) The State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)); and

(4) The chief elected official of the unit of general local government within which the adverse effect may occur.

(d) *Notice to subcontractors.* Not later than 60 days after the Contractor receives the Contracting Officer's notice of the anticipated termination or reduction, the Contractor shall—

(1) Provide notice of the anticipated termination or reduction to each first-tier subcontractor with a subcontract of \$500,000 or more; and

(2) Require that each such subcontractor—

(i) Provide notice to each of its subcontractors with a subcontract of \$100,000 or more; and

(ii) Impose a similar notice and flowdown requirement to subcontractors with subcontracts of \$100,000 or more.

(e) The notice provided an employee under paragraph (c) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d-1). If the Contractor has specified that the anticipated contract termination or reduction is not likely to result in plant closure or mass layoff, as defined in 29 U.S.C. 2101, the employee shall be eligible only for services under section 314(b) and paragraphs (1) through (14), (16), and (18) of section 314(c) of the Job Training Partnership Act (29 U.S.C. 1661c(b) and paragraphs (1) through (14), (16), and (18) of section 1661c(c)).

(End of clause)

[FR Doc. 96-31099 Filed 12-5-96; 8:45 am]

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