

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 511 and 552

[GSAR Amendment 2004–02; GSAR Case 2003–G502; Change 10]

RIN 3090–AH88

General Services Administration Acquisition Regulation; Defense Priorities and Allocations System

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to implement the Defense Priorities and Allocations System (DPAS) within the GSA Federal Supply Service (FSS).

DATES: *Effective Date:* September 16, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte, Regulatory Secretariat (V), Room 4035, GS Building, Washington, DC, 20405, (202) 501–4225, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite Amendment 2004–02, GSAR case 2003–G502.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation (FAR) Subpart 11.6 implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DOC) regulation in support of the national defense (see 15 CFR part 700). The DOC delegates authority to Delegate Agencies to place priority ratings on contracts and orders that support authorized programs. GSA is a Delegate Agency.

A proposed rule was published in the **Federal Register** at 68 FR 59510, October 15, 2003. No comments were received from the public. However, DOC submitted editorial changes that have been adopted in part.

FAR 11.603(f) instructs agencies to provide contracting officers with specific guidance on the issuance of rated orders. The GSA Federal Supply Service issues single award and multiple award Federal Supply Schedule contracts. These contracts are not rated orders as defined by DPAS. However, from time to time, an order placed against one of these schedule contracts may be a rated order. This rule would provide GSA contracting officers with the required specific guidance by adding a new

subpart to the GSAR. The rule also requires the use of a clause that explains to schedule contractors their obligations under DPAS.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not 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 primarily provides instructions for GSA contracting officers on including a contract clause in Federal Supply Schedules and information on placing DPAS rated orders. Contractors are already required to give priority to DPAS rated orders under Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*). A Final Regulatory Flexibility Act Analysis was, therefore, not performed.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 511 and 552

Government procurement.

Dated: September 8, 2004.

David A. Drabkin,

Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer.

■ Therefore, GSA amends 48 CFR parts 511 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 511 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 511—DESCRIBING AGENCY NEEDS

■ 2. Add subpart 511.6, consisting of sections 511.600 through 511.604, to read as follows:

Subpart 511.6—Priorities and Allocations

Sec

511.600 Scope of subpart.

511.601 Definitions.

511.602 General.

511.603 Procedures.

511.604 Solicitation provision and contract clause.

511.600 Scope of subpart.

FAR Subpart 11.6 implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DOC) regulation (15 CFR part 700) to assure timely delivery of industrial resources (products, materials, and services) in support of approved national defense, energy, and civil emergency preparedness (Homeland Security) programs. Pursuant to DPAS Delegation 3, DOC delegated GSA the authority to use the DPAS in support of the GSA Federal Supply system. This subpart implements the DPAS within GSA.

511.601 Definitions.

As used in this subpart—

Approved program means a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Department of Homeland Security Under Secretary for Emergency Preparedness and Response under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective Service Act and related statutes, and Executive Order 12742. See Schedule 1 of 15 CFR part 700 for a list of Delegate Agencies, approved programs, and program identification symbols at <http://www.bis.doc.gov/DefenseIndustrialBasePrograms/OSIES/DPAS/Default.htm>.

Authorized person means a Delegate Agency, or other entity either permitted under 15 CFR part 700, or explicitly authorized by DOC to issue DPAS rated orders.

Defense Priorities and Allocations System (DPAS) means the regulation published at 15 CFR part 700 that requires preferential treatment for certain contracts and orders placed by a Delegate Agency in support of an approved program.

Delegate Agency means an agency of the U.S. Government authorized by delegation from DOC to place priority ratings on contracts or orders needed to support approved programs.

Rated order means a prime contract, a subcontract, a purchase order, or a delivery or task order in support of an approved program issued in accordance with the provisions of the DPAS regulation (15 CFR part 700).

511.602 General.

(a) The purpose of the DPAS is to assure the timely availability of industrial resources to meet current national defense, energy, and civil emergency preparedness program requirements and to provide an operating system to support rapid industrial response in a national emergency. The primary statutory authority for the DPAS is Title I of the Defense Production Act of 1950, as amended, with additional authority from the Selective Service Act of 1948, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Executive Orders 12919 and 12742 delegate this authority to the DOC to administer the DPAS. The DOC is further authorized to redelegate to heads of other departments and agencies (Delegate Agencies) authority under the DPAS for the priority rating of contracts and orders in support of approved programs. Within the DOC, the Office of Strategic Industries and Economic Security (SIES) is assigned the implementation, administration, and compliance responsibilities for the system.

(b) The DPAS is published in the Code of Federal Regulations at 15 CFR part 700. This regulation provides an overview, a detailed explanation of operations and procedures, and other implementing guidance, including information on special priorities assistance and compliance.

(c) Orders placed under DPAS are "rated orders." Rated orders must receive preferential treatment only as necessary to meet delivery requirements. Rated orders are identified by a rating symbol of either "DX" or "DO" followed by a program identification symbol. All "DO" rated orders have equal priority with each other and take preference over unrated orders. All "DX" rated orders have equal priority with each other and take preference over "DO" rated orders and unrated orders. A program identification symbol indicates which approved program is supported by the rated order.

(d) Only authorized persons may place an order containing a DPAS priority rating.

(e) Within GSA, the Federal Supply Service (FSS) has been delegated the authority to issue rated orders to meet approved national defense, energy, and civil emergency preparedness program requirements of the supply distribution program. The Commissioner, FSS, shall issue additional guidance, as may be necessary, to ensure effective implementation of its delegated DPAS authority, such as the exclusions listed

in paragraph F(2) of the 1998 DOC DPAS Delegation 3.

(f) Executive Order 12919 defines the jurisdictional limitations as set forth in 15 CFR 700.18(b).

511.603 Procedures.

(a) A DPAS rating may be placed against an entire contract at time of award or an individual order issued under an existing, otherwise unrated, contract.

(b) When a DPAS rating is placed against an entire contract, the contracting officer must include the clause and provision prescribed at FAR 11.604, as well as the elements listed in paragraphs (c)(1) through (c)(3) of this section (see 15 CFR 700.12).

(c) When a DPAS rating is placed against an individual order issued under an existing, otherwise unrated, contract, the order must include the following elements (see 15 CFR 700.12):

(1) The appropriate priority rating symbol (*i.e.*, either "DO" or "DX") along with the program identification symbol. As required by the 1998 DOC DPAS Delegation 3 to GSA, when GSA contracting officers place DO rated orders, they will use program identification symbol K1. When placing a DX rated order for other agencies, GSA contracting officers will use the requesting agency program identification symbol. When a Delegate Agency places its own orders, it uses its own program identification symbol. (See Schedule 1 of 15 CFR part 700 for a listing of Delegate Agencies, approved programs, and program identification symbols.)

(2) A required delivery date. The words "as soon as possible" or "immediately" do not constitute a required delivery date. A specific date or a specified number of days ARO (after receipt of order) is acceptable.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order of an individual authorized to place rated orders.

(4) A statement that reads substantially as follows:

"This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700)."

(d) Multiple and Single Award Schedule contracts are not rated at time of award. Individual DPAS rated orders must include the elements listed in paragraphs (c)(1) through (c)(4) of this section.

511.604 Solicitation provision and contract clause.

The contracting officer must insert in full text the clause at 552.211-15, Defense Priorities and Allocations System Requirements, in Single and Multiple Award Schedule solicitations and resultant contracts, except where the contract is wholly for products, materials, or services excluded from DPAS applicability (see 15 CFR 700.18).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add section 552.211-15 to read as follows:

552.211-15 Defense Priorities and Allocations System Requirements.

As prescribed at 511.604, insert the following clause:

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM REQUIREMENTS (SEPT. 2004)**(a) Definitions.**

Approved program means a program determined to be necessary or appropriate for priorities and allocation support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Department of Homeland Security Under Secretary for Emergency Preparedness and Response under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective Service Act and related statutes, and Executive Order 12742. See Schedule 1 of 15 CFR part 700 for a list of Delegate Agencies, approved programs, and program identification symbols at <http://www.bis.doc.gov/DefenseIndustrialBasePrograms/OSIES/DPAS/Default.htm>.

Defense Priorities and Allocations System (DPAS) means the regulation published at 15 CFR part 700 that requires preferential treatment for certain contracts and orders placed by a Delegate Agency in support of an approved program.

Delegate Agency means an agency of the U.S. Government authorized by delegation from the Department of Commerce (DOC) to place priority ratings on contracts or orders needed to support approved programs.

Rated order means, for the purpose of this contract, a delivery or task order issued in accordance with the provisions of the DPAS regulation (15 CFR part 700).

(b) *Rated Order Requirement.* From time to time, the Contractor may receive a rated order under this contract from a Delegate Agency. The Contractor must give preferential treatment to rated orders as required by the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700). The existence of previously accepted unrated or lower rated orders is not sufficient reason to reject a rated order. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. There are two levels of ratings designated by the symbol of either "DO" or "DX." All "DO" rated orders have equal priority with each

other and take preference over unrated orders. All "DX" rated orders have equal priority with each other and take preference over "DO" rated orders and unrated orders. The rating designation is followed by a program identification symbol. Program identification symbols indicate which

approved program is supported by the rated order (see Schedule 1 of 15 CFR part 700 for a list of Delegate Agencies, approved programs, and program identification symbols).

(c) *Additional information.* Additional information may be obtained at the DOC

DPAS website <http://www.bis.doc.gov/DefenseIndustrialBasePrograms/OSIES/DPAS/Default.htm> or by contacting the designated Administrative Contracting Officer.

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