

Department of Defense

217.170

217.7603-3 Negotiating and executing supplemental agreements.

Subpart 217.77—Over and Above Work

217.7700 Scope of subpart.

217.7701 Procedures.

217.7702 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36345, July 31, 1991, unless otherwise noted.

Subpart 217.1—Multiyear Contracting

SOURCE: 63 FR 11529, Mar. 9, 1998, unless otherwise noted.

217.103 Definitions.

Advance procurement, as used in this subpart, means an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, components, and effort that must be funded in advance to maintain a planned production schedule.

217.170 General.

(a) Before awarding a multiyear contract, the head of the agency must compare the cost of that contract to the cost of an annual procurement approach, using a present value analysis. Do not award the multiyear contract unless the analysis shows that the multiyear contract will result in the lower cost (10 U.S.C. 2306b(1)(7); Section 8008(a) of Public Law 105-56 and similar sections in subsequent DoD appropriations acts).

(b) The head of the agency must provide written notice to the congressional defense committees at least 10 days before termination of any multiyear contract (10 U.S.C. 2306b(1)(6); 10 U.S.C. 2306c(d)(3); Section 8008(a) of Public Law 105-56 and similar sections in subsequent DoD appropriations acts).

(c) Every multiyear contract must comply with FAR 17.104(c), unless an exception is approved through the

budget process in coordination with the cognizant comptroller.

(d)(1) DoD must receive authorization from, or provide notification to, Congress before entering into a multiyear contract for certain procurements, including those expected to—

(i) Exceed \$500 million (see 217.171(a)(5); 217.172(c); and 217.173(b)(4));

(ii) Employ economic order quantity procurement in excess of \$20 million in any one year (see 217.174(a)(1));

(iii) Employ an unfunded contingent liability in excess of \$20 million (see 217.171(a)(4)(i) and 217.172(d)(1));

(iv) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (see 217.174(a)(2)); or

(v) Include a cancellation ceiling in excess of \$100 million (see 217.171(a)(4)(ii) and 217.172(d)(2)).

(2) A DoD component must submit a request for authority to enter into multiyear contracts described in paragraphs (d)(1)(i) through (iv) of this section as part of the component's budget submission for the fiscal year in which the multiyear contract will be initiated. DoD will include the request, for each candidate it supports, as part of the President's Budget for that year and in the Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (Section 8008(b) of Public Law 105-56).

(3) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements in paragraph (d)(2) of this section, the request for authority to enter into a multiyear contract must be—

(i) Formally submitted by the President as a budget amendment; or

(ii) Made by the Secretary of Defense, in writing, to the congressional defense committees. (Section 8008(b) of Public Law 105-56)

(4) Agencies must establish reporting procedures to meet the congressional notification requirements of paragraph (d)(1) of this section. The head of the agency must submit a copy of each notice to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and

Logistics) (OUSD (AT&L) DP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD (C) (P/B)).

[66 FR 63337, Dec. 6, 2001]

217.171 Multiyear contracts for services.

(a) *10 U.S.C. 2306c.* (1) The head of the agency may enter into a multiyear contract for a period of not more than 5 years for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated:

(i) Operation, maintenance, and support of facilities and installations.

(ii) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(iii) Specialized training requiring high quality instructor skills (*e.g.*, training for pilots and aircrew members or foreign language training).

(iv) Base services (*e.g.*, ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(2) The head of the agency must be guided by the following principles when entering into a multiyear contract for services:

(i) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of the plant or equipment. As used in this section, "useful commercial life" means the commercial utility of the facilities rather than the physical life, with due consideration given to such factors as the location, specialized nature, and obsolescence of the facilities.

(ii) Consider the desirability of obtaining an option to extend the term of the contract for a reasonable period not to exceed 3 years at prices that do not include charges for plant, equipment, or other nonrecurring costs already amortized.

(iii) Consider the desirability of reserving the right to take title, under the appropriate circumstances, to the plant or equipment upon payment of the unamortized portion of the cost.

(3) Before entering into a multiyear contract for services, the head of the agency must make a written determination that—

(i) There will be a continuing requirement for the services consistent with current plans for the proposed contract period;

(ii) Furnishing the services will require—

(A) A substantial initial investment in plant or equipment; or

(B) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(iii) Using a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations.

(4) The head of the agency must provide written notice to the congressional defense committees at least 30 days before award of a multiyear contract for services that include—

(i) An unfunded contingent liability in excess of \$20 million (Section 8008(a) of Public Law 105-56 and similar sections in subsequent DoD appropriations acts); or

(ii) A cancellation ceiling in excess of \$100 million.

(5) The head of the agency must not initiate a multiyear contract for services exceeding \$500 million unless a law specifically provides authority for the contract.

(b) *10 U.S.C. 2829.* (1) The head of the agency may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year.

(2) The head of the agency may use this authority only if the term of the contract does not exceed 4 years.

[66 FR 63337, Dec. 6, 2001]

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.173.