

agency must submit a copy of each notice to the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD (C) (P/B)).

[66 FR 63337, Dec. 6, 2001, as amended at 68 FR 7439, Feb. 14, 2003; 70 FR 24324, May 9, 2005]

**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).

(v) Environmental remediation services for—

(A) An active military installation;

(B) A military installation being closed or realigned under a base closure law as defined in 10 U.S.C. 2667(h)(2); or

(C) A site formerly used by DoD.

(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) If the budget for a contract that contains a cancellation ceiling in excess of \$100 million does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(i) The notification required by paragraph (a)(4) of this section shall include—

(A) The cancellation ceiling amounts planned for each program year in the

proposed multiyear contract, together with the reasons for the amounts planned;

(B) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) A financial risk assessment of not including budgeting for costs of contract cancellation (10 U.S.C. 2306c(d)); and

(ii) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award in accordance with the procedures at PGI 217.1.

(6) 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, as amended at 68 FR 43333, July 22, 2003; 70 FR 24324, May 9, 2005]

**217.172 Multiyear contracts for supplies.**

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law. For additional policies that apply only to multiyear contracts for weapon systems, see 217.173.

(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105-1(b), the use of such a contract will promote the national security of the United States (10 U.S.C. 2306b(a)(6)).

(c) The head of the agency must not enter into or extend a multiyear contract that exceeds \$500 million (when entered into or when extended) until the Secretary of Defense identifies the contract and any extension in a report

submitted to the congressional defense committees (10 U.S.C. 2306b(l)(5)).

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

(1) An unfunded contingent liability in excess of \$20 million (10 U.S.C. 2306b(l)(1)(B)(i)(II); Section 8008(a) of Public Law 105-56 and similar sections in subsequent DoD appropriations acts); or

(2) A cancellation ceiling in excess of \$100 million (10 U.S.C. 2306b(g)).

(e) The head of the agency shall ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (b) of this section:

(1) The multiyear exhibits required by DoD 7000.14-R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress that the current 5-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A)).

(i) The head of the agency shall submit information supporting this certification to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(ii) In the case of a contract with a cancellation ceiling in excess of \$100 million, if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(A) The head of the agency shall, as part of this certification, give written notification to the congressional defense committees of—

(1) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(2) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(3) A financial risk assessment of not including the budgeting for costs of contract cancellation (10 U.S.C. 2306b(g)); and