



August 11, 2004

Defense Acquisition Regulations Council
Attn: Ms. Amy Williams
OUSD (AT&L) DPAP (DAR)
IMD 3C132
3062 Defense Pentagon
Washington, DC 20301-0362

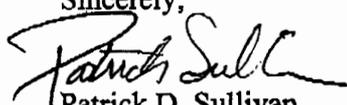
Dear Ms. Williams:

The Aerospace Industries Association appreciates the opportunity to submit comments on DFARS Case 2004-D001, Reporting Contract Performance Outside the United States. Our detailed comments on the proposed rule are attached.

As explained in the Federal Register notice itself, these clauses were established to fulfill the requirements of 10 USC 2410g. However, we note that the quarterly reporting requirement is not contained in that statute. We believe that in the spirit of the DFARS Transformation initiative, DOD should not establish or retain a reporting requirement that is not based on a statutory requirement.

It has been the experience of AIA companies that when DOD is tasked by Congress to study the impact of overseas performance on the defense industrial base, DOD often selects specific contractors and weapon systems and then collects very specific data on that limited universe. This is clearly a more effective approach than collecting very general data from all contractors all the time. DOD could also consider taking the approach that is contained in the Small Business clause (52,219-9, Para (d)(10)(i)) and ask contractors simply to agree to participate in studies or surveys of the industrial base, as may be required. This would give DOD access to data it may need without the significant burdens established by the quarterly reporting. Therefore we recommend deletion of the non-statutory reporting requirement created by the clause 252.225-7xxx.

If there are any questions, or if we can be of further assistance, please contact the undersigned at (703) 358-1045 or sullivan@aia-aerospace.org.

Sincerely,

Patrick D. Sullivan

Attachment

AIA Comments on Proposed Rule on Reporting of Contract Performance Outside the United States

- Clause 252.225-7004, Immediate Reporting of Intended Contract Performance Outside the United States and Canada.

--- Recommend changing the title of the clause to:

"Reporting of Intended Contract Performance Outside the United States and Canada - Submission After Award." (This title mirrors the title of provision 252.225-7003 with the exception of the replacement of "Submission with Offer" with "Submission after Award").

---Rationale: Use of the word "Immediate" in the clause title implies a timing requirement that is not reflected in the clause itself (which only requires notification "to the maximum extent practicable" at least 30 days before award of a subcontract).

- Subparagraph 252.225-7004 (a) Reporting requirement.

---Recommend subparagraph 252.225 – 7004 (a) be revised to state:

"The Contractor shall submit a report in accordance with this clause, if the Contractor or a subcontractor under a subcontract awarded pursuant to this contract, will perform any part of this contract outside the United States and Canada..."

--- Rationale: The clause appears to have an underlying assumption that all subcontracts that will support the work under the prime contract were proposed and awarded directly as a result of the award of the prime contract. This is not necessarily the case. When the Government is procuring a system or item that is the same as or similar to other systems or items currently in production either for DOD or commercial sales, it is very likely that the contractor will use existing subcontractors that are already under contract. The reporting requirement contained in the clause should not apply to the prime contractor's use of existing contracts, purchase agreement, purchase orders, etc., and the exercise of options under those agreements.

- Subparagraph 252.225-7004 (b) Submission of reports.

--- Recommend paragraph (b) (1) be revised to read:

"Shall submit a report as soon as practical after the information is known;"

--- Rationale: Paragraph (b) (1) implies a standard of timing for the reporting ("...as soon as the information is known...") that may be very difficult to

meet if taken literally. The timing requirement should be consistent with the language in subparagraph (b) (2) ("...to the maximum extent practicable...")

- Clause 252.225-7xxx, Quarterly Reporting of Contract Performance Outside the United States and Canada"

--- Recommend that the title of the clause be revised to:

"Quarterly Reporting of Actual Contract Performance Outside the United States and Canada".

--- Rationale: ---To differentiate the title of this clause from those of 252.225-7003 and -7004, the title should reflect the nature of the report as "actual" performance vs. "intended" performance.

--- Recommend subparagraph (a) Reporting requirement, be revised to state:

"...the Contractor shall report any subcontract, purchase, or intracompany transfer that - (1) Is awarded pursuant this contract; (2) Will be or is being performed outside the United States; ..."

--- Rational: The clause has an underlying assumption that all subcontracts that will support the work under the prime contract were proposed and awarded directly as a result of the award of the prime contract. This is not necessarily the case. When the Government is procuring a system or item that is the same as or similar to other systems or items currently in production either for DOD or commercial sales, it is very likely that the contractor will use existing subcontractors that are already under contract. The reporting requirement contained in the clause should not apply to the prime contractor's use of existing contracts, purchase agreement, purchase orders, etc., and the exercise of options under those agreements.

--- Paragraph (b) (1) contains an exception to the reporting requirement if "A foreign place of performance is the principal place of performance;"

--- Recommend clarification of which place of performance is principally a foreign place...the subcontractor or the performance of the prime contract.

--- Subparagraph (e) (1) Subcontracts, states that the substance of the clause is to be flowed to 1st tier subcontractors. However it is unclear if those subcontractors are to submit their reports to the prime or directly to DOD.

--- Recommend clarification.

- With these revisions, Contractors are likely to have in active contracts all three versions of this clause (252.225-7026 dated June 2000, 252.225-7003 and -7004 dated April 2003, and the new -7003, 7004 and 7xxx clauses). To improve compliance and simplify the administration of the contract requirements, we recommend that DOD specifically authorize Contracting Officers (PCO or ACO) to execute Single Process Initiative agreements to remove all prior clauses from existing contracts and replace them with the most recent revision resulting from this proposed rule. This change should be authorized if requested by the Contractor, and without the need for consideration. Such an authorization could be communicated through the Federal Register or by separate policy letter. This approach will simplify administration and improve compliance with the clause requirements.