



February 11, 2005

Ms. Robin Schulze
Defense Acquisition Regulations Council
OUSD (AT&L)/DPAP(DAR), IMD
3062 Defense Pentagon
Washington, D.C. 20301-3062031528

DFARS Case 2003-D097: Contract Period for Task and Delivery Order Contracts

Dear Ms. Schulze:

On behalf of the Professional Services Council, I am pleased to submit comments on the Department's interim rule to implement Section 813 of the fiscal year 2005 National Defense Authorization Act relating to the appropriate period of task and delivery order contracts, published in the Federal Register on December 15, 2004 (69 F.R. 74992). PSC supports this rule and recommends that the interim rule be converted to a final rule with the minor changes we recommend. We compliment the Department for moving expeditiously to implement the statutory correction to the contract period for covered task and delivery order contracts.

The Professional Services Council (PSC) is the leading national trade association that represents more than 170 companies of all business sizes providing professional and technical services to virtually every agency of the federal government, including information technology, engineering, logistics, operations and maintenance, consulting, international development, scientific, environmental and social sciences. We have been active in the debate on the appropriate period of task order contracts, from the three years of Congressional activity to the Department's issuance of the March 24, 2004 interim rule implementing the earlier statutory provision.

In our view, the revisions to DFARS 217.204(e) properly implement the revisions to 10 U.S.C. 2304a(f) enacted by Section 813 of the fiscal year 2005 National Defense Authorization Act. In particular, we applaud the clarification in (e)(i) that the time limit applies to the ordering period under covered task and delivery order contracts; this was a significant element of our comments on the March 2004 interim rule.

We also recommend two minor revisions to the current interim coverage.

First, in paragraph (e)(ii), add after the phrase "a report to Congress" the phrase "annually through fiscal year 2009". While the DFARS PGI at 217.204(e) accompanying the rule

includes this congressionally established sunset date, the reporting requirement for the period is statutory and should be referenced in the rule. Similarly, it will be clear on the face of the rule, without subsequent action by the DAR Council after October 1, 2009, that this reporting requirement expires unless extended by Congress.

Second, in paragraph (e)(iii), we recommend deleting the coverage in paragraph (iii)(A) and consolidating in one place the types of actions that 217.204(e)(i) does not apply to. In the interim rule, one type of contract – information technology – is specifically identified as subject to the rule, while exclusions are addressed in both (iii)(B) and in four numbered subparagraphs in paragraph (iii)(C). We understand that subparagraph (iii)(A) was included in this interim rule to counter a recommendation submitted on the March rule asserting that the prescription does not apply to information technology task orders awarded pursuant to the Clinger-Cohen Act. We don't challenge the Department's interpretation of applicability, but, in our view, the Department's interpretation of coverage included in the commentary accompanying this interim rule is sufficient to explain the Department's position and it would be a mistake to call out in the final rule coverage for a single type of task order contract.

Finally, in our earlier comments on the March 2004 interim rule, PSC expressed disappointment with the Department's "rush" to implement through that interim rule the changes made by Section 843 of the fiscal year 2004 National Defense Authorization Act. We appreciate the statement made in the Supplemental Information section accompanying this interim rule that "DoD has a responsibility to promptly implement laws enacted by Congress" -- if that standard were consistently and uniformly applied. Nevertheless, we compliment the Department for moving expeditiously to correct the prior interim rule and simultaneously implement the relevant statutory changes.

Thank you for the opportunity to submit these comments. If you or others have any questions or need any additional information, please do not hesitate to let me know. I can be reached at (703) 875-8059 or at Chvotkin@pscouncil.org.

Sincerely,



Alan Chvotkin, Esq.
Senior Vice President and Counsel