understand that hospitals, academic medical centers, medical foundations and other health care entities would have to restructure or renegotiate thousands of physician contracts to comply with the language in § 411.354(d)(1) regarding percentage compensation arrangements.

Accordingly, we published a 1-year delay of the effective date of the last sentence in § 411.354(d)(1) in the **Federal Register** on December 3, 2001 (66 FR 60154) in order to reconsider the definition of compensation that is ''set in advance'' as it relates to percentage compensation methodologies.

II. Response to Public Comments

In response to the publication of the interim final rule with comment period on December 3, 2001 (66 FR 60154), we received a total of four comments. Because the sole purpose of that interim final rule with comment period was to delay the effective date of the last sentence in § 411.354(d)(1), we only accepted comments addressing the length of the delay of that sentence. The following discussion includes a description of the two pertinent comments that we received, along with our responses.

Comment: Two commenters requested that we further postpone the effective date for an additional year in order to better effectuate our stated goals of providing stability in the health care services available to Medicare beneficiaries, and of avoiding unnecessary disruption of existing contractual arrangements. They were of the opinion that, although the current 1-year delay in effective date may provide us with enough time to publish further guidance, physicians and other health care entities will need additional time to renegotiate reimbursement and compensation arrangements in order to avoid disrupting existing contractual arrangements.

Response: We agree that additional time is necessary, both for us to reconsider this issue, and for health care entities to bring their arrangements into compliance. However, we believe that a further 6-month delay in the effective date will suffice because we expect a future final rule with comment period entitled ''Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships'' (Phase II) to further address this issue prior to this effective date.

III. Provisions of This Final Rule

To avoid any unnecessary disruption to existing contractual arrangements while we consider modifying this provision, we are further postponing, for an additional 6 months, until July 7, 2003, the effective date of the last sentence of § 411.354(d)(1). This delay is intended to avoid disruptions in the health care industry, and potential attendant problems for Medicare beneficiaries, which could be caused by allowing the last sentence of § 411.354(d)(1) to become effective on January 6, 2003. In the meantime, compensation that is required to be ''set in advance'' for purposes of compliance with section 1877 of the Act may continue to be based on percentage compensation methodologies, including those in which the compensation is based on a percentage of a fluctuating or indeterminate measure. We note that the remaining provisions of § 411.354(d)(1) will still apply and that all other requirements for exceptions must be satisfied (including, for example, the fair market value and ''volume and value'' requirements).

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that the notice and comment rulemaking procedure is impracticable, unnecessary, or contrary to the public interest and if the agency incorporates in the rule a statement of such a finding and the reasons supporting that finding.

Our implementation of this action without opportunity for public comment is based on the good cause exceptions in 5 U.S.C. 553(b)(B). We find that seeking public comment on this action would be impracticable and unnecessary. We are implementing this additional delay of effective date as a result of our review of the public comments that we received on the January 4, 2001 physician self-referral final rule. As discussed above, we understand from those comments and the comments we received on the December 3, 2001 interim final rule that, unless we further delay the effective date of the last sentence of § 411.354(d)(1), hospitals, academic medical centers, and other entities will have to renegotiate numerous contracts for physician services, potentially causing significant disruption within the health care industry. We are concerned that the disruption could unnecessarily inconvenience Medicare beneficiaries or interfere with their medical care and treatment. We do not believe that it is necessary to offer yet another opportunity for public comment on the same issue in the limited context of whether to delay this sentence of the regulation. In addition, given the imminence of the January 6, 2003 effective date, we find that seeking public comment on this delay in effective date would be impracticable because it would generate uncertainty regarding an imminent effective date. This uncertainty could cause health care providers to renegotiate thousands of contracts with physicians in an effort to comply with the regulation by January 6, 2003 if the proposed delay is not finalized until after the opportunity for public comment. Thus, providing the opportunity for public comment could result in the very disruption that this delay of effective date is intended to avoid.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: September 27, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 19, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–29797 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002–D005]

Defense Federal Acquisition Regulation Supplement; Foreign Military Sales Customer Involvement

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy regarding the participation of foreign military sales (FMS) customers in the development of contracts that DoD awards on their behalf. The objective is to provide FMS customers with more visibility into the contract pricing and award process.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D005.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises DFARS 225.7304 to provide for greater involvement of FMS customers in the contract award process, while protecting against unauthorized disclosure of contractor proprietary data. DoD published a proposed rule at 67 FR 20713 on April 26, 2002. Seven sources submitted comments on the proposed rule. As a result of the public comments, the final rule differs from the proposed rule in that it contains additional language requiring the contracting officer to—

1. Consult with the contractor before making a decision regarding the degree of FMS customer participation in contract negotiations; and

2. Provide an explanation to the FMS customer if its participation in negotiations will be limited.

A discussion of public comments addressing other aspects of the rule is provided below:

Comment: In 225.7304(b), change ''FMS customers should be encouraged to participate'' to ''FMS customers may participate.''

DoD Response: Do not concur. The objective of the rule is to increase transparency for FMS customers. The word ''may'' does not accurately reflect this objective.

Comment: Revise 225.7304(c) to permit disclosure of proprietary data only ''in limited circumstances where the contractor authorizes release of specific data'' rather than when ''the contractor authorizes its release.''

DoD Response: Do not concur. The language in the final rule adequately protects the rights of the contractor.

Comment: The Defense Security Cooperation Agency should determine the degree of customer participation in contract negotiations, rather than leaving this decision to the sole discretion of the contracting officer.

DoD Response: Do not concur. The contracting officer is responsible for contract negotiations.

Comment: Add language to increase the role of the FMS customer in the supplier selection process.

DoD Response: Do not concur. The FMS customer may suggest additional supply sources for any acquisition. Section 225.7304(e)(1) of the rule specifies that the FMS customer may suggest the inclusion of additional firms in the solicitation process.

Comment: Amend 225.7304(e)(3) to limit FMS customer observation or participation in negotiations involving *any* cost information, including cost or pricing data.

DoD Response: Do not concur. A major concern is to preclude unnecessary exclusion of FMS customer representatives from negotiations when only top-level pricing information is discussed. There are sufficient protections in the rule for nondisclosure of proprietary information. Participation of the FMS customer in discussions involving information other than cost or pricing data would be at the discretion of the contracting officer, after consultation with the contractor. This DFARS rule implements DoD policy, as set forth in a memorandum of the Deputy Secretary of Defense dated January 9, 2002, Subject: Department of Defense Policy on Foreign Customer Participation in the Letter of Offer and Acceptance and Contracting Development Process, which requires a DFARS deviation only when the negotiations involve cost or pricing data.

Comment: In 225.7304(f), delete the parenthetical ''(except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer),'' because it appears to encourage untimely modification of the stated requirements.

DoD Response: Do not concur. Section 225.7304(f) of the rule specifically requires timely notice.

Comment: Include additional language regarding requirements for the contracting officer to justify price reasonableness.

DoD Response: Do not concur. Section 225.7304(h) of the rule requires the contracting officer, upon request, to demonstrate the reasonableness of the contract price to the FMS customer. How this demonstration is accomplished should be left to the discretion of the contracting officer.

Comment: In 225.7304(h), delete the word ''sufficient'' from the phrase requiring the contracting officer to ''provide sufficient information to demonstrate the reasonableness of the price...'' This term is indefinable in the sense that it is virtually impossible to objectively determine what is ''sufficient'' information.

DoD Response: Do not concur. The word ''sufficient'' describes the adequacy of the information to demonstrate the reasonableness of the price. Although the term cannot be objectively defined, DoD does not agree that this establishes a limitless requirement.

Comment: Add language to address U.S. export laws that limit FMS customer participation in the acquisition process.

DoD Response: Do not concur. An approved Letter of Offer and Acceptance constitutes the legal authorization for the export of the defense articles, technical data, or defense services described therein. 22 U.S.C. 2778(b)(2) provides that ''* * * no license shall be required for exports or imports made by or for an agency of the United States Government * * * for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.''

Comment: Add language that clarifies the right of foreign auditors to conduct pre-contract award proposal audits and to have access to price negotiation memoranda and business clearance memoranda.

DoD Response: Do not concur. This DFARS rule is not the appropriate place to address the participation of foreign auditors in U.S. acquisitions or the release of price negotiation and business clearance memoranda to them. These topics are more appropriately addressed in the reciprocal procurement agreements with the foreign country.

Comment: Provide an explanation of what constitutes contractor proprietary data and the conditions under which a deviation would be granted for an FMS customer to participate in contract negotiations when cost or pricing data will be discussed.

DoD Response: What constitutes proprietary data is governed by U.S. law. The disclosure of proprietary data is generally controlled by the Trade Secrets Act (18 U.S.C. 1905) and the Freedom of Information Act (5 U.S.C. 552). A deviation to the regulations (for other than statutory requirements) may be granted when necessary to meet the specific needs and requirements of any procurement. Policy pertaining to deviations is provided in FAR Subpart 1.4 and DFARS Subpart 201.4.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD 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 involvement of FMS customers in contract development should have no significant effect on offerors or contractors, and the rule provides for the protection of contractor proprietary data.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7304 is revised to read as follows:

225.7304 FMS customer involvement.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.302–4 provides authority to contract without full and open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the LOA or other written direction sufficiently fulfills the requirements of FAR Subpart 6.3.

(b) FMS customers should be encouraged to participate with U.S. Government acquisition personnel in discussions with industry to—

(1) Develop technical specifications;

(2) Establish delivery schedules;

(3) Identify any special warranty provisions or other requirements unique to the FMS customer; and

(4) Review prices of varying alternatives, quantities, and options needed to make price-performance tradeoffs.

(c) Do not disclose to the FMS customer any data, including cost or pricing data, that is contractor proprietary unless the contractor authorizes its release.

(d) Except as provided in paragraph (e)(3) of this section, the degree of FMS customer participation in contract negotiations is left to the discretion of the contracting officer after consultation with the contractor. The contracting officer shall provide an explanation to the FMS customer if its participation in negotiations will be limited. Factors that may limit FMS customer participation include situations where—

(1) The contract includes requirements for more than one FMS customer;

(2) The contract includes unique U.S. requirements; or

(3) Contractor proprietary data is a subject of negotiations.

(e) Do not allow representatives of the FMS customer to—

(1) Direct the exclusion of certain firms from the solicitation process (they may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or

(3) Observe or participate in negotiations between the U.S. Government and the contractor involving cost or pricing data, unless a deviation is granted in accordance with Subpart 201.4.

(f) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer).

(g) Do not honor any requests by the FMS customer to reject any bid or proposal.

(h) If an FMS customer requests additional information concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide sufficient information to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This information—

(1) May include tailored responses, top-level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract price and the estimated contract price included in the initial LOA; and

(2) May be provided orally, in writing, or by any other method acceptable to the contracting officer.

[FR Doc. 02–29468 Filed 11–21–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 251 and 252 and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses, cross-references, and clause dates.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 251 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 251 and 252 and Appendix G to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 251 and 252 and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter1.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

251.102 [Amended]

2. Section 251.102 is amended in paragraph (e) introductory text, in the second sentence, by removing the parenthetical ''(f)'' and adding in its place ''(e)''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

3. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read ''(NOV 2002)''; and

b. In paragraph (b), in entries ''252.225–7007'' and ''252.225–7021'', by removing ''(SEP 2001)'' and adding in its place ''(OCT 2002)''.

4. Appendix G to Chapter 2 is amended by revising Part 2 to read as follows:

Appendix G—Activity Address Numbers

* * * * *

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

DAAA08, B7 Rock Island Arsenal, ATTN: SOSRI–CT, Rock Island, IL 61299–5000

DAAA09, BA U.S. Army Operations Support Command, ATTN: AMSOS–CCA, 1 Rock Island Arsenal, Rock Island, IL 61299–6000

DAAA10, 9X Blue Grass Army Depot, Procurement Office, Building S–14, ATTN: