

comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from date of publication of this Notice in the Federal Register. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

47 CFR Part 100

OMB Approval Number: None.

Title: Direct Broadcast Satellite Service.

Form No.: None.

Type of Review: Approval of existing collection.

Respondents: Businesses or other for profit.

Number of Respondents: 8.

Estimated Time Per Response: 400 hours.

Total Annual Burden: 3200 hours.

Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in granting DBS authorizations, and in determining the technical, legal, and financial qualifications of a satellite applicant, permittee or licensee. Existing information collection requirements are set forth in Part 100 of the Commission's Rules and in Commission orders. See *e.g., Inquiry Into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference*, 90 FCC 2d 676 (1982), *recon. denied*, 53 RR 2d 1637 (1983); *CBS, Inc.*, 98 FCC 2d 1056 (1983); *Tempo Enterprises, Inc.*, 1 FCC Rcd 20, 21 (1986), *United States Satellite Broadcasting Co.*, 3 FCC Rcd 6858, 6861-62 (1988).

Under the existing information collection requirements in the Commission's Rules, an entity awarded a DBS Authorization would be required to submit the information required pursuant to 47 CFR 100.13, 100.19, 100.21, 100.51. The Commission proposed to require that DBS auction winners submit: (1) Ownership information to determine compliance

with Parts 1 and 100 of the Commission's Rules; (2) a statement describing their efforts to comply with the proposed spectrum aggregation limitations; (3) an explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership, or other agreement or arrangement they enter into relating to the competitive bidding process prior to the close of bidding; and (4) any agreements or contracts pertaining to the transfer of the DBS authorization acquired through auction during the six years following grant of the authorization.

Ordering Clauses

Accordingly, *It is Ordered* that, pursuant to Sections 1, 4(i), 4(j), 7, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, and 309(j), *Notice is Hereby Given* of the proposed amendments to Part 100 of the Commission's Rules, 47 CFR Part 100, in accordance with the proposals in this Notice of Proposed Rulemaking, and that *Comment is Sought* regarding such proposals.

It is Further Ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*

Administrative Matters

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See *generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 20, 1995 and reply comments on or before November 30, 1995. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments send additional copies to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M

Street, NW, Washington, DC 20554. For further information concerning this rulemaking contact Paula Ford at (202)739-0733.

Initial Regulatory Flexibility Act Statement

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the Notice and is not published in the Federal Register. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

List of Subjects in 47 CFR Part 100

Radio, Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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DEPARTMENT OF TRANSPORTATION

48 CFR Parts 1213, 1237 and 1252

[Docket OST-95-775; Notice 95-13]

RIN 2105-AC-30

Revision of Department of Transportation Acquisition Regulation

AGENCY: Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The proposed rule implements a Department of Transportation Office of the Inspector General recommendation resulting from a review on the acquisition of commercial training services. The Department is proposing to amend the Transportation Acquisition Regulation (TAR) to: Require all offerors to certify that the data provided concerning company qualifications, background, etc. is current, accurate and complete; and prohibit contractors from soliciting or advertising private, non-Government training while under contract to the Department.

DATES: Comments must be received on or before December 4, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments, preferably in triplicate, to Docket Clerk, Docket No. OST-95-775, Department of Transportation, 400 Seventh Street, S.W., Room 4107, Washington, D.C. 20590. Please cite TAR revision in all correspondence concerning this proposal.

FOR FURTHER INFORMATION CONTACT: Barbara Perreault Weakley, Office of Acquisition and Grant Management, M-61, 400 Seventh Street, S.W., Washington, D.C. 20590: (202) 366-4967.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the proposed approach (obtaining certification of data submitted with offers, bids or proposals), including suggested alternative approaches to obtaining the required information from industry. In particular, the Department is exploring ways to reduce paperwork burden on small businesses. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

A. Background

It is the policy of the Department of Transportation to require prospective training service contractors (educational institutions, large and small businesses) to certify the data provided concerning qualifications, background statements, etc., are current, accurate, and complete at the time of submitting a quotation or an offer. In addition, DOT considers inappropriate the soliciting, advertising or marketing of related or unrelated training during the conduct of training (i.e., courses, seminars, classes) while under contract to DOT. Solicitation provisions and a contract clause will be incorporated into the TAR requiring offeror certification and prohibiting the marketing of an institution's or vendor's training resources while conducting training under contract to DOT.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

B. Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department Regulatory Policies and Procedures. The Department does not believe that there would be sufficient Federalism implications to warrant the preparation of a Federalism assessment. This rule will not have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

C. Paperwork Reduction Act

The information collection requirements associated with this rule are being submitted to the Office of Management and Budget (OMB) for approval in accordance with 44 U.S.C. Chapter 35 under OMB No. 2105-AC-30; Administration: Office of the Secretary of Transportation; Title: Amendment to Transportation Acquisition Regulation; Need for Information: To require certification of capability statements and background data submitted per the requirements of the solicitation or request for quotation; Proposed Use of Information: To verify accuracy and completeness of offerors' capability statements and data submitted per the requirements of the solicitation or request for quotation; Frequency: On occasion; Burden Estimate: 792 hours; Forms: None; Average Burden Hours Per Respondent: 1 hour, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the certification requirements. Comments on the proposed information collection requirement should be sent to the DOT rulemaking docket for this proposed action and comments may also be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Department of Transportation.

This proposal revises record keeping and information collection requirements and require approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 1213, 1237 and 1252

Government procurement.

This NPRM is issued under the delegated authority of 49 CFR Part 1.59(q). This authority has been redelegated to the Senior Procurement Executive. Issued this 26th day of October 1995, at Washington, D.C. David J. Litman,
Senior Procurement Executive.

Adoption of Amendments

For the reasons set out in the preamble, 48 CFR Chapter 12 is proposed to be amended as set forth below:

1. The authority citation for 48 CFR chapter 12, Parts 1213, 1237, and 1252 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

PART 1213—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

2. Part 1213 is amended by adding subpart 1213.71, Department of Transportation Procedures for Acquiring Training Services as follows:

Subpart 1213.71—Department of Transportation Procedures for Acquiring Training Services

1213.7100 Applicability.

(a) DOT policy at (TAR) 48 CFR 1237.7000 also applies to the Standard Form (SF) 182, Request, Authorization, Agreement and Certification of Training, which may be used to acquire training services; however, the policy does not apply to training services acquired by the Government purchase/credit card. The Government purchase/credit card can only be used to acquire training services valued at \$2,500 or less.

(b) As reflected in (TAR) 48 CFR 1237.7002, this policy does not apply to training attended by DOT employees which is scheduled and conducted by Government sources of supply, educational institutions, or private entities where DOT does not control or sponsor the training. Examples of when the policy does and does not apply include:

(1) When SF 182s are issued for three DOT employees to attend a one week course at a university or other private entity, the policy does not apply. DOT does not control this course because the university or private entity has a contract in place with the training provider and DOT is placing an order under an existing contract; and

(2) When DOT awards a contract to a university or other private entity to provide training for DOT and/or other Government personnel, the policy applies. DOT controls this course;

therefore, no soliciting or advertising of private, non-Government training while conducting the contracted-for training is permitted.

1213.7101 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at (TAR) 48 CFR 1252.237-71, Certification of Data, in all solicitations and requests for quotations, and the clause at (TAR) 48 CFR 1252.237-72, Prohibition on Advertising, in solicitations, requests for quotations, and all contracts (e.g., purchase orders, SF 182s) for training services when the content and/or presentation of the training is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be incorporated by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

PART 1237—SERVICE CONTRACTING

3. Subpart 1237.70, Department of Transportation Procedures for Acquiring Training Services, is added as follows:

SUBPART 1237.70—DEPARTMENT OF TRANSPORTATION PROCEDURES FOR ACQUIRING TRAINING SERVICES

1237.7000 Policy.

When training services are provided under contract to DOT, it is the policy of DOT that all prospective contractors:

(a) Certify that the data provided concerning company qualifications, background statements, etc., is current, accurate, and complete; and

(b) Agree to not solicit or advertise private, non-Government training while conducting a training course.

1237.7001 Certification of data.

Towards fulfilling DOT's policy at (TAR) 48 CFR 1237.7000(a), contracting officers shall request information from prospective contractors for certification purposes. The type of information

requested is dependent upon the criticality of the service and/or any unique or essential qualification requirements.

1237.7002 Applicability.

The policy at (TAR) 48 CFR 1237.7000 applies to all DOT contracts as defined in FAR 2.101 for training services when DOT controls the content and/or the presentation of the course. This policy does not apply to courses attended by DOT employees which are offered and sponsored by Government sources of supply, educational institutions, or private entities where DOT does not control the course content or presentation. (See (TAR) 48 CFR 1213.7100 for examples.)

1237.7003 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.237-71, Certification of Data, in solicitations and the clause at (TAR) 48 CFR 1252.237-72, Prohibition on Advertising, in solicitations and contracts for training services when the content and/or presentation of the course is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be incorporated by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Part 1252 is amended to add sections 1252.237-71 and 1252.237-72 to read as follows:

1252.237-71 Certification of data.

As prescribed in (TAR) 48 CFR 1213.7101 and 1237.7003, insert the following provision:
CERTIFICATION OF DATA (OCT 1995)

(a) The offeror represents and certifies that to the best of its knowledge and belief, the

information and/or data (e.g., company profile, qualifications, background statements, brochures) submitted with its offer is current, accurate, and complete as of the date of its offer.

(b) The offeror understands that any inaccurate data provided to the Department of Transportation may subject the offeror, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) enforcement action for false claims or statements pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801-3812 and 49 CFR Part 31 and/or; (3) termination for default under any contract resulting from its offer and/or; (4) debarment or suspension.

(c) The offeror agrees to obtain a similar certification from its subcontractors.

Signature: _____

Date: _____

Typed Name and Title _____

Company Name _____

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(End of provision)

1252.237-72 Prohibition on advertising.

As prescribed in (TAR) 48 CFR 1213.7001 and 1237.7003, insert the following clause:

PROHIBITION ON ADVERTISING (OCT 1995)

The contractor or its representatives (including training instructors) shall not advertise or solicit business for private, non-Government training while conducting training services under this contract. This prohibition extends to oral comments, distribution or sales of written materials, and/or sales of promotional videos or audio tapes regarding non-Government training opportunities.

The contractor agrees to insert this clause in its sub-contracts.

(End of clause)

5. In the appendix to subpart 1253.3, the TAR Matrix is amended by adding 1252.237-71, Certification of Data, and 1252.237-72, Prohibition on Advertising, immediately following 1252.237-70, Qualifications of Employees, as follows:

Appendix To Subpart 1253.3

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TAR MATRIX

Provision or clause	Prescribed In	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.237-71 Certification of Data.	1237.7003	P	No	K					A	A												
1252.237-72 Prohibition on Advertising.	1237.7003	C	No	I					A	A												

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