

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.91 mile downstream of U.S. Route 61	*655
Approximately 0.56 mile upstream of U.S. Route 61 ...	*657
<i>Sanders Creek:</i>	
At U.S. Route 61	*657
Approximately 90 feet upstream of upstream corporate limits	*678
Maps available for inspection at the Boscobel City Hall, 1006 Wisconsin Avenue, Boscobel, Wisconsin.	
Iowa County (Unincorporated Areas) (FEMA Docket No. 7227)	
<i>Wisconsin River:</i>	
At downstream county boundary	*680
At upstream county boundary	*731
Maps available for inspection at the Iowa County Zoning Office, 222 North Iowa Street, Dodgeville, Wisconsin.	
Manitowoc County (Unincorporated Areas) (FEMA Docket No. 7243)	
<i>Sheboygan River:</i>	
At county boundary	*845
At corporate limits of Kiel (State Routes 67 and 32) ..	*882
Maps available for inspection at the Manitowoc County Planning & Park Commission, 4319 Expo Drive, Manitowoc, Wisconsin.	
Merrill (City), Lincoln County (FEMA Docket No. 7247)	
<i>Wisconsin River:</i>	
Approximately 1.1 miles downstream of U.S. Route 51	*1,241
Approximately 500 feet upstream of Alexander Dam	*1,276
<i>Prairie River:</i>	
At the confluence with Wisconsin River	*1,252
Approximately 1,480 feet upstream of Third Street	*1,259
<i>Devil Creek:</i>	
At the confluence with Wisconsin River	*1,254
At Heldt Street	*1,266
Maps available for inspection at the City of Merrill Building Inspector/Zoning Administrator's Office, Merrill City Hall, 1004 East First Street, Merrill, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 11, 1998.

Michael J. Armstrong,
Associate Director for Mitigation.

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 97-D321]

Defense Federal Acquisition Regulation Supplement; Waiver of Domestic Source Restrictions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has adopted as final, with changes, an interim rule that was published in the **Federal Register** on February 4, 1998. The rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the National Defense Authorization Act for Fiscal Year 1998. Section 811 limits the authority for waiver of the domestic source restrictions of 10 U.S.C. 2534(a).

EFFECTIVE DATE: May 22, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule with request for comments was published at 63 FR 5744 on February 4, 1998. The rule amended DFARS Parts 225 and 252 to implement Section 811 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 811 provides that DoD may exercise the authority of 10 U.S.C. 2534(d), to waive the domestic source restrictions of 10 U.S.C. 2534(a), only if the waiver is made for a particular item and for a particular foreign country. 10 U.S.C. 2534(a) contains domestic source restrictions applicable to procurement of the following items: Buses, chemical weapons antidote, components for naval vessels (including air circuit breakers, anchor and mooring chain, and totally enclosed lifeboats), and ball and roller bearings.

One source submitted comments in response to the interim rule. The comments were considered in the formation of the final rule. The final rule adds guidance to clarify that, for contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, such waiver shall be applied as directed or authorized in the waiver to (1) subcontracts entered into on or after the effective date of the waiver; and (2) options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

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 there are no known small business manufacturers of buses, air circuit breakers, or the restricted chemical weapons antidote; the acquisition of anchor and mooring chain, totally enclosed lifeboat survival systems, and noncommercial ball and roller bearings is presently restricted to domestic sources by defense appropriations acts; and the restrictions of 10 U.S.C. 2534(a) do not apply to purchases of commercial items incorporating ball or roller bearings.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because this final 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 Parts 225 and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 225 and 252, which was published at 63 FR 5744 on February 4, 1998, is adopted as final with the following changes:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

2. Section 225.7005 is amended by adding paragraph (a)(4) to read as follows:

225.7005 Waiver of certain restrictions.

* * * * *

(a) * * *

(4) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, such waiver shall be applied as directed or authorized in the waiver to—

(i) Subcontracts entered into on or after the effective date of the waiver; and

(ii) Options for the procurement of items that are exercised after the effective date of the waiver, if the option

prices are adjusted for any reason other than the application of the waiver.

* * * * *

3. Section 225.7019-3 is amended by adding paragraph (b)(4) to read as follows:

225.7019-3 Waiver.

* * * * *

(b) * * *

(4) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, such waiver shall be applied as directed or authorized in the waiver to—

(1) Subcontracts entered into on or after the effective date of the waiver; and

(ii) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

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[FR Doc. 98-13741 Filed 5-21-98; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1816

Revision to the NASA FAR Supplement on Technical Performance Incentive Guidance.

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to correct inconsistencies on technical performance incentive guidance.

EFFECTIVE DATE: May 22, 1998.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Office of Procurement, Contract Management Division (Code HK), (202) 358-0478.

SUPPLEMENTARY INFORMATION:

Background

NFS section 1816.402-270, NASA Technical Performance Incentives, requires the use of positive and negative performance incentives in hardware contracts greater than \$25M unless waived in writing by the Center Director. New section 1816.402, Application of Predetermined, Formula-Type Incentives, was added as a final rule in the March 17, 1998 **Federal Register** (63 FR 12997-12998). This section provided guidance on the appropriate selection and use of positive and negative performance incentives,

but did not change the mandatory requirement in 1816.402-270 which appears to preempt those guidelines in certain circumstances. This incongruity is rectified by adding language to 1816.402-270 stating that NASA has considered the guidelines in 1816.402 and has determined that performance incentives are appropriate for, and must be used in, hardware contracts greater than \$25M. Additional administrative revisions are made to indicate that this policy does not apply to commercial acquisitions under FAR Part 12 and that negative incentives are not required for contracts which already require total contractor liability for product performance.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting requirements or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1816

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1816 is amended as follows:

PART 1816—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Part 1816 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. In section 1816.402-270, paragraphs (a), (b), and (c) are revised to read as follows:

1816.402-270 NASA technical performance incentives.

(a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts based on performance-oriented documents (see FAR 11.101(a)), except those awarded under the commercial item procedures of FAR part 12, where the primary deliverable(s) is (are) hardware with a total value (including options) greater than \$25 million. Any exception to this requirement shall be approved in writing by the Center Director. Performance incentives may be included in hardware contracts valued under \$25 million acquired under procedures other than FAR Part 12 at the discretion of the procurement officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure

hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance, unless the contract type requires complete contractor liability for product performance (e.g., fixed price). In this latter case, a negative incentive is not required. In structuring the incentives, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, either positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and