

17.700

decisionmaking concerning performance.

(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years. The review should determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with 17.602(a).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether it is likely that qualified offerors will compete for the contract.

Subpart 17.7—Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense

SOURCE: 77 FR 69722, Nov. 20, 2012, unless otherwise noted.

17.700 Scope of subpart.

(a) Compliance with this subpart is in addition to the policies and procedures for interagency acquisitions set forth in subpart 17.5. This subpart prescribes policies and procedures specific to acquisitions of supplies and services by nondefense agencies on behalf of the Department of Defense (DoD).

(b) This subpart implements Public Law 110-181, section 801, as amended (10 U.S.C. 2304 Note).

17.701 Definitions.

As used in this subpart—

48 CFR Ch. 1 (10-1-13 Edition)

Department of Defense (DoD) acquisition official means—

(1) A DoD contracting officer; or

(2) Any other DoD official authorized to approve a direct acquisition or an assisted acquisition on behalf of DoD.

Nondefense agency means any department or agency of the Federal Government other than the Department of Defense.

Nondefense agency that is an element of the intelligence community means the agencies identified in 50 U.S.C. 401a(4), which include the—

(1) Office of the Director of National Intelligence;

(2) Central Intelligence Agency;

(3) Intelligence elements of the Federal Bureau of Investigation, Department of Energy, and Drug Enforcement Agency;

(4) Bureau of Intelligence and Research of the Department of State;

(5) Office of Intelligence and Analysis of the Department of the Treasury;

(6) The Office of Intelligence and Analysis of the Department of Homeland Security and the Office of Intelligence of the Coast Guard; and

(7) Such other elements of any department or agency as have been designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

17.702 Applicability.

This subpart applies to all acquisitions made by nondefense agencies on behalf of DoD. It does not apply to contracts entered into by a nondefense agency that is an element of the intelligence community for the performance of a joint program conducted to meet the needs of DoD and the nondefense agency.

17.703 Policy.

(a) A DoD acquisition official may request a nondefense agency to conduct an acquisition on behalf of DoD in excess of the simplified acquisition threshold *only if* the head of the nondefense agency conducting the acquisition on DoD's behalf has certified that the agency will comply with applicable

procurement requirements for that fiscal year except when waived in accordance with paragraph (e) of this section.

(b) A nondefense agency is compliant with applicable procurement requirements if the procurement policies, procedures, and internal controls of the nondefense agency applicable to the procurement of supplies and services on behalf of DoD, and the manner in which they are administered, are adequate to ensure the compliance of the nondefense department or agency with—

(1) The Federal Acquisition Regulation and other laws and regulations that apply to procurements of supplies and services by Federal agencies; and

(2) Laws and regulations that apply to procurements of supplies and services made by DoD through other Federal agencies, including DoD financial management regulations, the Defense Federal Acquisition Regulation Supplement (DFARS), DoD class deviations, and the DFARS Procedures, Guidance, and Information (PGI). (The DFARS, DoD class deviations, and PGI are accessible at: <http://www.acq.osd.mil/dpap/dars>).

(c) Within 30 days of the beginning of each fiscal year, submit nondefense agency certifications of compliance to the Director, Defense Procurement and Acquisition Policy, Department of Defense, 3060 Defense Pentagon, Washington DC 20301-3060.

(d) The DoD acquisition official, as defined at 17.701, shall provide to the servicing nondefense agency contracting officer any DoD-unique terms, conditions, other related statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract. In the event there are no DoD-unique requirements beyond the FAR, the DoD acquisition official shall so inform the servicing nondefense agency contracting officer in writing. Nondefense agency contracting officers are responsible for ensuring support provided in response to DoD's request complies with paragraph (b) of this section.

(e) *Waiver.* The limitation in paragraph (a) of this section shall not apply to the acquisition of supplies and services on behalf of DoD by a nondefense agency during any fiscal year for which

the Under Secretary of Defense for Acquisition, Technology, and Logistics has determined in writing that it is necessary in the interest of DoD to acquire supplies and services through the nondefense agency during the fiscal year. The written determination shall identify the acquisition categories to which the waiver applies.

(f) Nondefense agency certifications, waivers, and additional information are available at http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html.

[77 FR 69722, Nov. 20, 2012, as amended at 78 FR 37685, June 21, 2013]

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