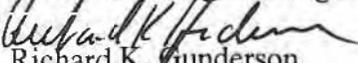


MAY 27 2011



Homeland
Security

MEMORANDUM FOR: Department of Homeland Security
Heads of the Contracting Activities

FROM: 
Richard K. Gunderson
Deputy Chief Procurement Officer

SUBJECT: Class Deviation from the Federal Acquisition
Regulation (FAR) Subpart 16.5, Protests (umber 11-04)

Purpose: The purpose of this memorandum is to issue a class deviation pursuant to FAR 1.404 and 1.405, to extend the sunset date for protests against the award of task or delivery orders by the U. S. Coast Guard from May 28, 2011 to September 30, 2016.

Effective Date: Immediately.

Background: FAR Case 2011-015 was approved by the Councils as an "interim rule with request for comments" under the simplified approval procedures. This rule will amend the Federal Acquisition Regulation to implement section 825 of the National Defense Authorization Act for Fiscal Year 2011, enacted January 7, 2011. Section 825 amends 10 U.S.C. 2304(c) to extend the sunset date for protests against the award of task or delivery orders by DoD, NASA, and the Coast Guard from May 28, 2011 to September 30, 2016. However, this change to the FAR will not be published in the Federal Register nor become effective prior to May 28, 2011.

Accordingly, in order to keep regulatory requirements applicable to the USCG consistent with authorities granted in Section 825, with respect to protest procedures of FAR Part 33 for protests against the award of task or delivery orders, a class deviation from the FAR is necessary.

FAR 1.404(a)(1) authorizes DHS to grant this class deviation after consultation with the chairman of the Civilian Agency Acquisition Council (CAAC). Mr. Jeremy Olson consulted with Edward Loeb, Acting CAAC Chairperson, on May 25, 2011.

Expiration Date: This class deviation will remain in effect until incorporated in the FAR or otherwise rescinded.

Attachments:

- DHS Class Deviation from the Federal Acquisition Regulations (FAR) Subpart 16.5 –
- SEC. 825. Extension Of Sunset Date For Certain Protests Of Task And Delivery Order Contracts
- FAR change approved by the Councils

Additional Information: Questions or comments about this class deviation may be directed to Jeremy Olson at (202) 447-5197, or by email at JERRY.OLSON@dhs.gov.

Class Deviation
Federal Acquisition Regulations (FAR) Subpart 16.505, Protests Against USCG Task and Delivery Orders

Findings

The Civilian Agency Acquisition Council and Defense Acquisition Regulatory Council approved, under the authority of Section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383), extending the sunset date for protests against the award of certain task or delivery orders by DoD, NASA, and the Coast Guard from May 28, 2011 to September 30, 2016. However, this change to the FAR will not be published in the Federal Register nor become effective prior to May 28, 2011. The regulatory requirements applicable to the USCG procurement process, with respect to protest procedures of FAR Part 33 for protests against the award of task or delivery orders, will be inconsistent with the authorities granted by Section 825 unless a deviation from the FAR is granted. Failure to grant a deviation will be detrimental to the USCG procurement process.

Determination

Pursuant to FAR 1.404 and 1.405, I hereby issue a class deviation to recognize September 30, 2016 as the sunset date at FAR 16.505 for expiration of protest authority for USCG task and delivery orders

An expedited FAR case is being processed to update the sunset date in the FAR. This class deviation will remain in effect until incorporated in the FAR or otherwise rescinded.



Richard K. Gunderson
Deputy Chief Procurement Officer
Department of Homeland Security

27 MAY 2011
Date

Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383)

SEC. 825. EXTENSION OF SUNSET DATE FOR CERTAIN PROTESTS OF TASK AND DELIVERY ORDER CONTRACTS.

Paragraph (3) of section 2304c(e) of title 10, United States Code, is amended to read as follows:

“(3) Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016.”

DRAFT FAR CHANGE APPROVED BY THE COUNCILS

Part 16—Types of Contracts

Subpart 16.5---Indefinite-Delivery Contracts

* * * * *

16.505 Ordering.

(a) General.

* * * * *

(9)

(i) No protest under [Subpart 33.1](#) is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for—

(A) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or

(B) *A protest of an order valued in excess of \$10 million.* Protests of orders in excess of \$10 million may only be filed with the Government Accountability Office, in accordance with the procedures at [33.104](#).

(ii) The authority to protest the placement of an order under this subpart expires on September 30, 2016, for DoD, NASA and the Coast Guard (10 U.S.C. 2304a(d) and 2304c(e)) and on (May 27, 2011), for other agencies (41 U.S.C. 4103(d) and 4106(f)). ~~(10 U.S.C. 2304a(d) and 2304c(d), and 41 U.S.C. 253h(d) and 253j(d)) and September 30, 2016, for DoD, NASA, and the Coast Guard (10 U.S.C. 2304a(d) and 2304c(e)).~~

(10) * * * * *