PGI 201.3 -AGENCY ACQUISITION REGULATIONS

Parent topic: PGI Part 201 - FEDERAL ACQUISITION REGULATIONS SYSTEM

PGI 201.301 Policy.

(b)(i) Contract clauses and solicitation provisions developed by departments and agencies (local clauses) that constitute a significant revision, as defined at FAR 1.501-1, shall be—

(A) Published for public comment in the Federal Register in accordance with FAR 1.501; and

(B) Approved in accordance with DFARS 201.304.

(ii) A local clause is considered a significant revision, as defined at FAR 1.501-1, if the clause—

(A) Contains a new certification requirement for contractors or offerors that is not imposed by statute (see FAR 1.107 and DFARS 201.107 and 201.304(2));

(B) Constitutes a deviation (as defined at FAR 1.401) from the parts and subparts identified at DFARS 201.402(1); or

(C) Will be used on a repetitive basis; and

(*1*) Imposes a new requirement for the collection of information from 10 or more members of the public (see FAR 1.106); or

(*2*) Has any cost or administrative impact on contractors or offerors beyond that contained in the FAR or DFARS.

(iii) A local clause is not considered a significant revision as defined at FAR 1.501-1, if the clause—

(A) Is for a single-use intended to meet the needs of an individual acquisition (e.g. a clause developed as a result of negotiations and documented in the business clearance or similar document), except for clauses that constitute a deviation (as defined at FAR 1.401) from the parts and subparts identified at DFARS 201.402(1); or

(B) May be used on a repetitive basis and has no new or additional cost or administrative impact on contractors or offerors beyond any cost or administrative impact contained in existing FAR or DFARS coverage.

PGI 201.304 Agency control and compliance procedures.

(4) Plans for controlling the use of clauses or provisions other than those prescribed by the FAR or DFARS (local clauses), as required by DFARS 201.304(4), shall include procedures to ensure that a local clause—

(A) Is evaluated to determine whether the local clause constitutes a significant revision (see 201.301

(b));

(B) Is numbered in accordance with FAR 52.1 and DFARS 252.1 (see 252.103);

(C) Is accompanied by a prescription in the appropriate part and subpart of the department or agency FAR supplement where the subject matter of the clause receives its primary treatment;

(D) If it constitutes a significant revision—

(*1*) Is published for public comment in the Federal Register in accordance with FAR 1.501 and DFARS 201.501;

(*2*) Complies with the Paperwork Reduction Act 1980 (44 USC chapter 35), in accordance with FAR 1.106and 1.301;

(*3*) As a matter of policy, complies with the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*.); and

(*4*) Is approved in accordance with DFARS 201.304; and

(E) Is published with a prescription as a final rule in the Federal Register in order to amend the department or agency's chapter of Title 48 of the Code of Federal Regulations (CFR), if it is to be used on a repetitive basis.

(5)(A) Prior to publication for public comment in the Federal Register of a local clause that constitutes a significant revision (see 201.301 (b)), departments and agencies shall submit, in accordance with agency procedures, the following information electronically via email to the Director, Defense Acquisition Regulation (DAR) Council, at osd.pentagon.ousd-a-s.mbx.dfars@mail.mil:

(*1*) The name of the requesting department or agency.

(*2*) The name, email address and phone number of the point of contract for the local clause and the department or agency clause control point of contact.

(*3*) A detailed rationale for the request, to include—

(*i*) Why existing FAR or DFARS clauses or provisions do not satisfy, or could not be tailored to meet, the department or agency's needs;

(*ii*) What contracting problem or situation will be avoided, corrected, or improved if the local clause is approved; and

(*iii*) Identification of other DoD Components that have expressed interest in use of the clause for consideration for incorporation into the DFARS.

(*4*) The draft rule to be published in the Federal Register to solicit public comments on the proposal to amend the department and agency's chapter of Title 48 of the CFR to incorporate the local clause.

(*5*) The initial regulatory flexibility analysis. For additional information on the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*.) see Appendix 8 of the FAR Operating Guide accessible via the Defense Acquisition Regulation System (DARS) website at http://www.acq.osd.mil/dpap/dars/about.html.

(*6*) If applicable, the request package to be submitted to the Office of Management and Budget for any new information collection requirement imposed by the local clause. For additional information

on the Paperwork Reduction Act (44 USC Chapter 35) see Appendix 9 of the FAR Operating Guide accessible via the DARS website at http://www.acq.osd.mil/dpap/dars/about.html.

(*7*) Evidence of coordination with the department or agency's legal counsel.

(*8*) Evidence of coordination with the appropriate stakeholders (e.g., Chief Information Officer, Office of Small Business Programs, etc.).

(B) The Director, DAR Council, shall—

(*1*) Determine whether the local clause unnecessarily duplicates coverage currently contained within the FAR or DFARS;

(*2*) Determine whether the local clause constitutes a deviation from the FAR or DFARS (see FAR 1.401) and requires approval in accordance with DFARS 201.4;

(*3*) Coordinate the local clause with the appropriate stakeholders;

(*4*) Coordinate local clauses, as appropriate, with the DAR Council for consideration of the local clause for incorporation in the DFARS; and

(*5*) Provide recommendations regarding the local clause package.

(C) Requests for Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), approval of local clauses that have been published for public comment in the Federal Register, shall be submitted electronically via email through the Director, DAR Council, at osd.pentagon.ousd-a-s.mbx.dfars@mail.mil and shall include the following:

(*1*) A memorandum requesting Principal Director, DPCAP, approval of the local clause.

(*2*) A copy of the notice of the rule published in the Federal Register.

(*3*) A copy of all public comments received in response to the Federal Register notice.

(*4*) An analysis of, and responses to, any public comments received.

(*5*) The draft final rule to be published in the Federal Register to amend the department or agency's chapter of Title 48 of the CFR to incorporate the local clause.

(*6*) The final regulatory flexibility analysis. For additional information on the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*.) see Appendix 8 of the FAR Operating Guide accessible via the DARS website at http://www.acq.osd.mil/dpap/dars/about.html.

(*7*) If applicable, a copy of the Office of Management and Budget's approval of any new information collection requirement imposed by the local clause. For additional information on the Paperwork Reduction Act (44 USC chapter 35) see Appendix 9 of the FAR Operating Guide accessible via the DARS website at http://www.acq.osd.mil/dpap/dars/about.html.

(*8*) Evidence of coordination with the department or agency's legal counsel.

(*9*) Evidence of coordination with the appropriate stakeholders (e.g., Chief Information Officer, Office of Small Business Programs, etc.).

(*10*) A copy of any initial recommendations received from the Director, DAR Council on the proposed

rule.