

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 50 and adding DTV channel 13 at Corpus Christi.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

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DEPARTMENT OF DEFENSE**48 CFR Parts 232 and 252****[DFARS Case 2002-D001]**

Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1008 of the National Defense Authorization Act for Fiscal Year 2001. Section 1008 requires contractors to submit, and DoD to process, payment requests in electronic form.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-2022; facsimile (703) 602-0350. Please cite DFARS Case 2002-D001.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD published an interim rule at 68 FR 8450 on February 21, 2003, to implement Section 1008 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). Section 1008 requires contractors to submit, and DoD to process, payment requests in electronic form. Seventeen sources submitted comments on the interim rule. A discussion of the comments is provided below. Differences between the interim and final rules are discussed in the DoD response to Comment 9 below. In addition, DoD has revised the language at 232.7002(a)(6)(ii) and 252.232-7003(c) to further address the involvement of the contract administration office in decisions to permit exceptions to the rule.

1. *Comment:* The rule should permit agencies to implement procedures identifying criteria for exemptions, incorporation of the DFARS clause in existing contracts, and the method for documenting an alternate payment method between the contracting officer, the Defense Finance and Accounting Service (DFAS), and the vendor when the vendor cannot comply with the DFARS policy.

DoD Response: Concur in part. The DFARS rule does not preclude agencies from providing guidance to contracting officers to address the particular situations of the agency that may warrant an exemption from the policy. DoD believes the language at DFARS 232.7002(a)(1) through (6) provides sufficient flexibility for agencies to implement this policy without needing specific additional exemption authority.

As for existing contracts, DoD does not believe it is necessary to specify whether the clause applies retroactively. Policy on the applicability of DFARS changes is provided in DFARS 201.304(6), which states, “* * * Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.” This rule does not deviate from the policy in DFARS 201.304(6) and, therefore, requires no additional instructions regarding applicability.

2. *Comment:* The rule should provide leeway to exclude classified procurement systems from any mandated changes implemented.

DoD Response: Concur. Classified invoices are exempt from the electronic submission requirement in accordance with DFARS 232.7002(a)(3).

3. *Comment:* How will DoD know that contracting offices are fully functional? Comments were submitted in response to the proposed rule published on May 31, 2002, which expressed concerns regarding the ability of agency software to comply with the electronic submission requirements.

DoD Response: In response to a comment received on the proposed rule published at 67 FR 38057 on May 31, 2002, DFARS 232.7002(a)(6) was added to the interim rule. This paragraph permits the contracting officer to authorize a contractor to submit a payment request in other than electronic form until such time as the agency is able to process payments electronically. Knowing which contracting offices are fully functional is an internal DoD implementation issue, which is outside the scope of this case. DoD anticipates that agencies will implement internal

controls to monitor progress in complying with this policy.

4. *Comment:* One company indicated that it was not set up to send electronic invoices or accept electronic purchase orders. The company does not accept e-mail or FAX orders, and does not accept credit cards. Changing to all electronic payments would be a hardship to a small company such as itself that does limited Government business.

DoD Response: DoD believes this situation is adequately addressed at DFARS 232.7002(a)(6), which permits an exception to the policy if the contractor is unable to submit a payment request in electronic form.

5. *Comment:* There is a concern that one DoD payment office may be implementing a policy stating that, once it begins paying under contract via Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA), there shall be no invoices on that contract that will be paid manually.

DoD Response: DoD believes it should be a rare instance where manual payments are needed after payment has been made electronically under a contract. However, DoD believes this situation is adequately addressed at DFARS 232.7002(a)(6), which permits submission of a payment request in other than electronic form if the contractor is unable to submit or DoD is unable to receive a payment request in electronic form, and the parties (contracting officer, payment office, contract administration office, and contractor) agree on an alternative method. While a particular payment office may have a general policy such as the one described by the respondent, DoD anticipates that such a policy would be flexible enough to accommodate unique circumstances that may arise during contract performance.

6. *Comment:* How will vendors know what DFAS payment systems are available to accept invoicing through WAWF-RA and whether there will be staff available for testing of different payment systems for electronic invoicing? In addition, will purchasing agencies have all the required information to give vendors for electronic invoicing when orders are called in for supplies?

DoD Response: Information regarding DFAS and electronic payment is available at www.dfas.mil/ecedi. If the required information is not available on that web site, the cognizant contracting officer should be able to assist the contractor.

7. *Comment:* There should be a 6-month grace period during which paper invoices will continue to be acceptable