

PART 206—COMPETITION REQUIREMENTS

2. Section 206.001 is revised to read as follows:

206.001 Applicability.

(a) As authorized by 10 U.S.C. 1091, contracts awarded using the procedures in 237.104(b)(ii) are exempt from the competition requirements of FAR Part 6.

3. Section 206.202 is revised to read as follows:

206.202 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F shall identify the source to be excluded from the contract action. Include the information at PGI 206.202, as applicable, and any other information that may be pertinent, in the supporting documentation.

206.302-1 [Amended]

4. Section 206.302-1 is amended by removing paragraph (b)(4).

5. Section 206.302-2 is revised to read as follows:

206.302-2 Unusual and compelling urgency.

(b) *Application.* For guidance on circumstances under which use of this authority may be appropriate, see PGI 206.302-2(b).

206.303-1 [Amended]

6. Section 206.303-1 is amended by removing paragraphs (b) and (c).

206.303-2 [Removed]

7. Section 206.303-2 is removed.

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DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 252

[DFARS Case 2003-D011]

Defense Federal Acquisition Regulation Supplement; Contractor Qualifications Relating to Contract Placement

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to delete text pertaining to contractor qualification requirements. This

proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 23, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@osd.mil. Please cite DFARS Case 2003-D011 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2003-D011.

At the end of the comment period, interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602-0326.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dp/dars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes include—

- Deletion of text at 209.103, 209.103-70, and 252.209-7000 pertaining to obsolete Intermediate Range Nuclear Forces (INF) Treaty inspection requirements.

- Deletion of text at DFARS 209.106-1, 209.106-2, and 209.202 containing internal DoD procedures relating to requests for pre-award surveys and approval for use of product qualification

requirements. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A proposed rule describing the purpose and structure of PGI is published elsewhere in this issue of the **Federal Register** under DFARS Case 2003-D090, Procedures, Guidance, and Information.

- Deletion of unnecessary first article testing and approval requirements in DFARS Subpart 209.3.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to 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 the DFARS text proposed for deletion addresses requirements that are obsolete or unnecessary or that do not have a significant effect beyond the internal operating procedures of DoD. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D011.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 209 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR parts 209 and 252 as follows:

1. The authority citation for 48 CFR parts 209 and 252 continues to read as follows:

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

PART 209—CONTRACTOR QUALIFICATIONS

209.103 and 209.103-70 [Removed]

2. Sections 209.103 and 209.103-70 are removed.

3. Section 209.106 is revised to read as follows:

209.106 Preaward surveys.

When requesting a preaward survey, follow the procedures at PGI 209.106.

209.106-1 and 209.106-2 [Removed]

4. Sections 209.106-1 and 209.106-2 are removed.

5. Section 209.202 is revised to read as follows:

209.202 Policy.

(a)(1) When establishing qualification requirements, obtain approval in accordance with PGI 209.202(a)(1).

Subpart 209.3—[Removed]

6. Subpart 209.3 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.209-7000 [Removed and Reserved]**

7. Section 252.209-7000 is removed and reserved.

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DEPARTMENT OF DEFENSE**48 CFR Part 212**

[DFARS Case 2003-D018]

Defense Federal Acquisition Regulation Supplement; Laws Inapplicable to Commercial Subcontracts

AGENCY: Department of Defense (DoD).
ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the Trade Agreements Act and the Buy American Act from the list of laws inapplicable to subcontracts for commercial items. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 23, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@osd.mil. Please cite DFARS Case 2003-D018 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above

methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2003-D018.

At the end of the comment period, interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dp/dars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes amend DFARS 212.504 to remove the Trade Agreements Act (19 U.S.C. 2512) and the Buy American Act (41 U.S.C. 10) from the list of laws inapplicable to subcontracts for the acquisition of commercial items. Inclusion of these laws on the list is unnecessary, because the Government does not apply the restrictions of the Buy American Act or the Trade Agreements Act at the subcontract level. The prime contractor is responsible for providing an end product that meets the requirements of the Acts. The Trade Agreements Act imposes no requirements as to the origin of components. Although the Buy American Act requires that the cost of domestic components exceed 50 percent of the cost of all components, the subcontracts for the components themselves need not comply with the Buy American Act. The domestic components need only to have been manufactured in the United States, without themselves satisfying a component test.

In some cases, inclusion of the Buy American Act on the list of laws inapplicable to subcontracts for

commercial items has been misinterpreted to mean that commercial components do not count in the calculation of whether domestic components exceed 50 percent of the value of the components of an end item. This is an erroneous interpretation, because the prime contractor must still comply with the Buy American Act when using commercial components. In addition, inclusion of the Buy American Act and the Trade Agreements Act on the list has been misinterpreted to mean that the prime contractor need not comply with the Acts for subcontracted end items. This is also erroneous because, in accordance with FAR 12.501, waiver of the Buy American Act or the Trade Agreements Act is not applicable if the prime contractor is reselling or distributing commercial items of another contractor without adding value.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to 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 the rule is a clarification of the Government's existing policy of not applying the Buy American Act or the Trade Agreements Act at the subcontract level. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D018.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 Part 212

Government procurement.

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

Therefore, DoD proposes to amend 48 CFR Part 212 as follows:

1. The authority citation for 48 CFR Part 212 continues to read as follows: