

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602-0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds DFARS Subpart 207.5 to implement Section 804 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375). Section 804 adds 10 U.S.C. 2383, which places limitations on the award of contracts for performance of the acquisition functions closely associated with inherently governmental functions that are listed in section 7.503(d) of the Federal Acquisition Regulation.

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 has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The analysis is summarized as follows: The objective of the rule is to ensure proper management and oversight of contracts for functions that generally are not considered to be inherently governmental, but may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. The impact of the rule on small entities is unknown at this time. DoD agencies will implement the requirements of the rule in making decisions whether to enter into, and in the administration of, contracts for performance of the acquisition functions closely associated with inherently governmental functions that are listed in section 7.503(d) of the Federal Acquisition Regulation. 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 2004-D021.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 804 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375). Section 804 provides that DoD may enter into contracts for the performance of acquisition functions closely associated with inherently governmental functions only if: (1) Appropriate DoD personnel cannot reasonably be made available to perform the functions; (2) appropriate DoD personnel will supervise contractor performance and will perform all associated inherently governmental functions; and (3) DoD addresses any potential organizational conflict of interest of the contractor in the performance of the contract. Section 804 became effective upon enactment on October 28, 2004. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 207

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 207 is amended as follows:

■ 1. The authority citation for 48 CFR Part 207 continues to read as follows:

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

PART 207—ACQUISITION PLANNING

■ 2. Subpart 207.5 is added to read as follows:

Subpart 207.5—Inherently Governmental Functions

Sec.
207.500 Scope of subpart.
207.503 Policy.

207.500 Scope of subpart.

This subpart also implements 10 U.S.C. 2383.

207.503 Policy.

(S-70) *Contracts for acquisition functions.*

(1) In accordance with 10 U.S.C. 2383, the head of an agency may enter into a contract for performance of the acquisition functions closely associated with inherently governmental functions that are listed at FAR 7.503(d) only if—

(i) The contracting officer determines that appropriate military or civilian DoD personnel—

(A) Cannot reasonably be made available to perform the functions;

(B) Will supervise contractor performance of the contract; and

(C) Will perform all inherently governmental functions associated with the functions to be performed under the contract; and

(ii) The contracting officer ensures that the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract (see FAR Subpart 9.5).

(2) See related information at PGI 207.503(S-70).

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DEPARTMENT OF DEFENSE

48 CFR Part 209

Defense Federal Acquisition Regulation Supplement; Technical Amendment

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement to update the list of agency debarring and suspending officials.

DATES: Effective March 23, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

List of Subjects in 48 CFR Part 209

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 209 is amended as follows:

■ 1. The authority citation for 48 CFR Part 209 continues to read as follows:

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

PART 209—CONTRACTOR QUALIFICATIONS

209.403 [Amended]

■ 2. Section 209.403 is amended in the definition of “Debarred and suspending official”, in paragraph (1), by removing “National Security Agency—The

Director” and adding in its place “National Security Agency—The Senior Acquisition Executive”.

[FR Doc. 05–5633 Filed 3–22–05; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 2004–D029]

Defense Federal Acquisition Regulation Supplement; Extension of Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 843 of the National Defense Authorization Act for Fiscal Year 2005. Section 843 provides for a 5-year extension of the DoD test program for negotiation of comprehensive small business subcontracting plans.

DATES: Effective March 23, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350. Please cite DFARS Case 2004–D029.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 219.702 to implement Section 843 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 843 amends Section 834(e) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Pub. L. 101–189; 15 U.S.C. 637 note) to extend the termination date of the DoD test program for negotiation of comprehensive small business subcontracting plans, from September 30, 2005, to September 30, 2010. The test program permits participating DoD contractors to negotiate comprehensive small business subcontracting plans on a plant, division, or company-wide basis.

This rule also updates a statutory reference at DFARS 219.702(a), and updates the heading of DFARS Subpart 219.7 for consistency with the heading of FAR Subpart 19.7.

This rule was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2004–D029.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain 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 219

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 219 is amended as follows:

■ 1. The authority citation for 48 CFR part 219 continues to read as follows:

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

PART 219—SMALL BUSINESS PROGRAMS

Subpart 219.7 [Amended]

■ 2. Subpart 219.7 is amended by revising the subpart heading to read “Subpart 219.7—The Small Business Subcontracting Program”.

219.702 [Amended]

■ 3. Section 219.702 is amended as follows:

■ a. In paragraph (a), in the introductory text, by adding after “as amended” the parenthetical “(15 U.S.C. 637 note)”; and

■ b. In paragraph (a)(i)(A)(1), by removing “2005” and adding in its place “2010”.

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DEPARTMENT OF DEFENSE

48 CFR Parts 234, 242, and 252

[DFARS Case 2003–D030]

Defense Federal Acquisition Regulation Supplement; Major Systems Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to major systems acquisition, earned value management systems, and cost/schedule status reporting. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: *Effective Date:* March 23, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350. Please cite DFARS Case 2003–D030.

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/dpap/dfars/transf.htm>.

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

- Deletion of the definitions of “systems” and “systems acquisition” at DFARS 234.001, since these terms are not used within DFARS part 234.

- Relocation of text on earned value management systems from DFARS part 234 to part 242, since earned value management system requirements are not limited to major systems acquisition. The earned value management system thresholds