

STD-130, Identification Marking of U.S. Military Property, cited in the contract Schedule.

(ii) The issuing agency code—

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) For each item that requires unique item identification under paragraph (c) of this clause, in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report at the time of delivery, either as part of, or associated with, the Material Inspection and Receiving Report, the following information:

(1) Concatenated unique item identifier; or DoD recognized unique identification equivalent.

(2) Unique item identifier type.

(3) Issuing agency code (if concatenated unique item identifier is used).

(4) Enterprise identifier (if concatenated unique item identifier is used).

(5) Original part number.

(6) Lot or batch number.

(7) Current part number (if not the same as the original part number).

(8) Current part number effective date.

(9) Serial number.

(10) Government's unit acquisition cost.

(e) *Embedded DoD serially managed subassemblies, components, and parts.* The Contractor shall report at the time of delivery, either as part of, or associated with the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Concatenated unique item identifier or DoD recognized unique identification equivalent of the parent item delivered under a contract line, subline, or exhibit line item that contains the embedded subassembly, component, or part.

(2) Concatenated unique item identifier or DoD recognized unique identification equivalent of the embedded subassembly, component, or part.

(3) Unique item identifier type.\*\*

(4) Issuing agency code (if concatenated unique item identifier is used).\*\*

(5) Enterprise identifier (if concatenated unique item identifier is used).\*\*

(6) Original part number.\*\*

(7) Lot or batch number.\*\*

(8) Current part number (if not the same as the original part number).\*\*

(9) Current part number effective date.\*\*

(10) Serial number.\*\*

(11) Unit of measure.

(12) Description.

\*\* Once per item.

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause in accordance with the data submission procedures at <http://www.acq.osd.mil/dpap/UID/DataSubmission.htm>.

(g) *Subcontracts.* If paragraph (c)(1) of this clause applies, the Contractor shall include this clause, including this paragraph (g), in all subcontracts issued under this contract. (End of clause)

#### Alternate I (APR 2005)

As prescribed in 211.274-4(c) delete paragraphs (c), (d), (e), (f), and (g) of the basic

clause, and add the following paragraphs (c) and (d) to the basic clause.

(c) For each item delivered under a contract line, subline, or exhibit line item under paragraph (b) of this clause, in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report the Government's unit acquisition cost.

(d) The Contractor shall submit the information required by paragraph (c) of this clause in accordance with the data submission procedures at <http://www.acq.osd.mil/dpap/UID/DataSubmission.htm>.

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 225 and 252

[DFARS Case 2004-D001]

#### Defense Federal Acquisition Regulation Supplement; Reporting Contract Performance Outside the United States

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements for reporting of contract performance outside the United States. 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: April 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2004-D001.

#### 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>.

DFARS Subpart 225.72, Reporting Contract Performance Outside the United States, implements: (1) DoD policy for contractor reporting of performance outside the United States under contracts exceeding \$500,000; and (2) requirements of 10 U.S.C. 2410g for offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada, when the contract exceeds \$10 million and could be performed inside the United States or Canada.

This final rule revises DFARS Subpart 225.72, and the corresponding solicitation provision and contract clause, to clarify the two separate reporting requirements. In addition, the rule removes DFARS text (previously at 225.7202) related to contracting officer distribution of reports. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 69 FR 31939 on June 8, 2004. DoD received comments from one industry association. The comments are summarized as follows:

1. *Comment:* The quarterly reporting requirement, which is not based on a statutory requirement, should be eliminated.

*DoD Response:* Do not concur. The quarterly report provides information that DoD uses in the assessment of bilateral defense trade with allied countries. The information is also of significant interest to Congress.

2. *Comment:* The reporting requirements should apply only to subcontracts that are awarded directly as a result of the award of the prime contract.

*DoD Response:* Do not concur. The purpose of the reporting requirements is to determine the portion of total contract dollars spent on performance outside the United States, regardless of whether the dollars are spent as a result of a preexisting contractual arrangement or as a result of a subcontract awarded directly under the prime contract.

3. *Comment:* The clause titles and text should be revised to clarify the nature and timing of the reporting requirements.

*DoD Response:* The final rule incorporates most of the recommended clarifying changes. In particular, the final rule—

- Revises the titles of the clauses at (252) 225-7004 and (252) 225-7006 to make a distinction between requirements for reporting of intended and actual contract performance;

- Revises paragraph (b) of the clause at (252) 225-7004 to require reporting "as soon as practical after the information is known," rather than "as soon as the information is known."

- Revises paragraph (b), and adds a new paragraph (e)(3), in the clause at (252) 225-7006 to further clarify reporting requirements for contractors and subcontractors.

4. *Comment:* Contracting officers should be authorized to substitute the new clauses for prior versions of the clauses that are in existing contracts, to simplify administration and improve compliance with clause requirements.

*DoD Response:* In accordance with FAR 1.108, the new clauses apply to solicitations issued on or after the effective date of this DFARS rule. Contracting officers may, at their discretion, include the clauses in any existing contract with appropriate consideration.

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 certifies that this final rule will not 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 clarifies existing requirements for reporting contract performance outside the United States, with no substantive change to those requirements.

## C. Paperwork Reduction Act

The rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The existing information collection requirements in DFARS Subpart 225.72 have been approved by OMB under Control Number 0704-0229 for use through March 31, 2007.

## List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

### Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

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

## PART 225—FOREIGN ACQUISITION

■ 2. Subpart 225.72 is revised to read as follows:

### Subpart 225.72—Reporting Contract Performance Outside the United States

Sec.

225.7201 Policy.

225.7202 Exception.

225.7203 Contracting officer distribution of reports.

225.7204 Solicitation provision and contract clauses.

#### 225.7201 Policy.

(a) 10 U.S.C. 2410g requires offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada when the contract could be performed inside the United States or Canada.

(b) DoD requires contractors to report the volume, type, and nature of contract performance outside the United States.

#### 225.7202 Exception.

This subpart does not apply to contracts for commercial items, construction, ores, natural gas, utilities, petroleum products and crudes, timber (logs), or subsistence.

#### 225.7203 Contracting officer distribution of reports.

Follow the procedures at PGI 225.7203 for distribution of reports submitted with offers in accordance with the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer.

#### 225.7204 Solicitation provision and contract clauses.

Except for acquisitions described in 225.7202—

(a) Use the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, in solicitations with a value exceeding \$10 million;

(b) Use the clause at 252.225-7004, Report of Intended Performance Outside the United States and Canada—Submission after Award, in solicitations and contracts with a value exceeding \$10 million; and

(c) Use the clause at 252.225-7006, Quarterly Reporting of Actual Contract Performance Outside the United States, in solicitations and contracts with a value exceeding \$500,000.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Sections 252.225-7003 and 252.225-7004 are revised to read as follows:

### 252.225-7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.

As prescribed in 225.7204(a), use the following provision:

#### Report of Intended Performance Outside the United States and Canada—Submission With Offer (Apr 2005)

(a) The offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if—

(1) The offer exceeds \$10 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds \$500,000 in value; and

(ii) Could be performed inside the United States or Canada.

(b) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(d) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>. (End of provision)

### 252.225-7004 Report of Intended Performance Outside the United States and Canada—Submission after Award.

As prescribed in 225.7204(b), use the following clause:

#### Report of Intended Performance Outside the United States and Canada—Submission After Award (Apr 2005)

(a) *Reporting requirement.* The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that—

(1) Exceeds \$500,000 in value; and

(2) Could be performed inside the United States or Canada.

(b) *Submission of reports.* The Contractor—

(1) Shall submit a report as soon as practical after the information is known;

(2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(3) Need not resubmit information submitted with its offer, unless the information changes;

(4) Shall submit all reports to the Contracting Officer; and

(5) Shall submit a copy of each report to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301-3060.

(c) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>. (End of clause)

■ 4. Section 252.225-7006 is added to read as follows:

**252.225-7006 Quarterly Reporting of Actual Contract Performance Outside the United States.**

As prescribed in 225.7204(c), use the following clause:

**Quarterly Reporting of Actual Contract Performance Outside the United States (Apr 2005)**

(a) *Reporting requirement.* Except as provided in paragraph (b) of this clause, within 10 days after the end of each quarter of the Government's fiscal year, the Contractor shall report any subcontract, purchase, or intracompany transfer that—

(1) Will be or has been performed outside the United States;

(2) Exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(3) Has not been identified in a report for a previous quarter.

(b) *Exception.* Reporting under this clause is not required if—

(1) A foreign place of performance is the principal place of performance of the contract; and

(2) The Contractor specified the foreign place of performance in its offer.

(c) *Submission of reports.* The Contractor shall submit the reports required by this clause to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301-3060.

(d) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.

(e) *Subcontracts.* The Contractor—

(1) Shall include the substance of this clause in all first-tier subcontracts exceeding \$500,000, except those for commercial items, construction, ores, natural gases, utilities,

petroleum products and crudes, timber (logs), or subsistence;

(2) Shall provide the number of this contract to its subcontractors required to submit reports under this clause; and

(3) Shall require the subcontractor, with respect to performance of its subcontract, to comply with the requirements directed to the Contractor in paragraphs (a) through (d) of this clause.

(End of clause)

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 041126332-5039-02; I.D. 041805D]

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 Meters) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 Pacific cod total allowable catch (TAC) specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 19, 2005, through 2400 hrs, A.l.t., December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 Pacific cod TAC specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 2,504 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the reallocation on April 13, 2005 (70 FR 19708, April 14, 2005). See §§ 679.20(a)(7)(i)(A), (a)(7)(i)(C), (c)(3)(iii), and (c)(5).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2005 Pacific cod TAC specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,300 mt, and is setting aside the remaining 54 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*