

Program Executive Office for Weapons
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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.219–7009 [Amended]

■ 3. Section 252.219–7009 is amended as follows:

- a. By revising the clause date to read “(SEP 2007)”; and
- b. In paragraph (a), in the first sentence, by removing “dated February 1, 2002.”.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207 and 227

RIN 0750–AF70

Defense Federal Acquisition Regulation Supplement; Technical Data Rights (DFARS Case 2006–D055)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 802(a) of the National Defense Authorization Act for Fiscal Year 2007. Section 802(a) contains requirements for DoD to assess long-term technical data needs when acquiring major weapon systems and subsystems.

DATES: *Effective date:* September 6, 2007.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 5, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D055, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2006–D055 in the subject line of the message.
- *Fax:* (703) 602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

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

SUPPLEMENTARY INFORMATION:

A. Background

Section 802(a) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) requires that DoD program managers for major weapon systems, and subsystems of major weapon systems, assess the long-term technical data needs of such systems and subsystems and establish corresponding acquisition strategies that provide for technical data rights needed to sustain such systems and subsystems over their life cycle. This interim rule amends DFARS Parts 207 and 227 to implement Section 802(a) of Public Law 109–364. Although the law does not address requirements for computer software, it is long-standing DoD policy to apply the same or similar requirements to both technical data and computer software, since many issues are common to both. Therefore, this interim DFARS rule applies to both technical data and computer software.

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 pertains to acquisition planning that is performed by the Government. 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 2006–D055.

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.*

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 802(a) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 802(a) requires DoD to revise regulations to incorporate requirements for program managers to assess the long-term technical data needs of major weapon systems and subsystems, and to establish corresponding acquisition strategies that provide for technical data rights needed to sustain such systems and subsystems over their life cycle. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 207 and 227

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 207 and 227 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207 and 227 continues to read as follows:

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

PART 207—ACQUISITION PLANNING

■ 2. Section 207.106 is amended by adding paragraph (S–70) to read as follows:

207.106 Additional requirements for major systems.

* * * * *

(S–70)(1) In accordance with Section 802(a) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) and DoD policy requirements, acquisition plans for major weapon systems and subsystems of major weapon systems shall—

(i) Assess the long-term technical data and computer software needs of those systems and subsystems; and
(ii) Establish acquisition strategies that provide for the technical data deliverables and associated license rights needed to sustain those systems and subsystems over their life cycle. The strategy may include—

(A) The development of maintenance capabilities within DoD; or

(B) Competition for contracts for sustainment of the systems or subsystems.

(2) Assessments and corresponding acquisition strategies developed under this section shall—

(i) Be developed before issuance of a solicitation for the weapon system or subsystem;

(ii) Address the merits of including a priced contract option for the future delivery of technical data and computer software, and associated license rights, that were not acquired upon initial contract award;

(iii) Address the potential for changes in the sustainment plan over the life cycle of the weapon system or subsystem; and

(iv) Apply to weapon systems and subsystems that are to be supported by performance-based logistics arrangements as well as to weapon systems and subsystems that are to be supported by other sustainment approaches.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 3. Section 227.7103-1 is amended by adding paragraph (f) to read as follows:

227.7103-1 Policy.
* * * * *

(f) For acquisitions involving major weapon systems or subsystems of major weapon systems, the acquisition plan shall address acquisition strategies that provide for technical data and the associated license rights in accordance with 207.106(S-70).

■ 4. Section 227.7203-1 is amended by adding paragraph (e) to read as follows:

227.7203-1 Policy.
* * * * *

(e) For acquisitions involving major weapon systems or subsystems of major weapon systems, the acquisition plan shall address acquisition strategies that provide for computer software and computer software documentation, and the associated license rights, in accordance with 207.106(S-70).

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212 and 234

RIN 0750-AF38

Defense Federal Acquisition Regulation Supplement; Acquisition of Major Weapon Systems as Commercial Items (DFARS Case 2006-D012)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 803 of the National Defense Authorization Act for Fiscal Year 2006. Section 803 places limitations on the acquisition of a major weapon system as a commercial item.

EFFECTIVE DATE: September 6, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Felisha Hitt, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0310; facsimile (703) 602-7887. Please cite DFARS Case 2006-D012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 58537 on October 4, 2006, to implement Section 803 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). Section 803 permits the treatment or acquisition of a major weapon system as a commercial item only if (1) The Secretary of Defense determines that the major weapon system meets the definition of commercial item at 41 U.S.C. 403(12) and such treatment is necessary to meet national security objectives; and (2) the congressional defense committees are notified at least 30 days before such treatment or acquisition occurs.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

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 relates to internal DoD considerations regarding the acquisition of major weapon systems.

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 212 and 234

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 212 and 234, which was published at 71 FR 58537 on October 4, 2006, is adopted as a final rule without change.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216 and 252

RIN 0750-AF44

Defense Federal Acquisition Regulation Supplement; Labor Reimbursement on DoD Non-Commercial Time-and-Materials and Labor-Hour Contracts (DFARS Case 2006-D030)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide policy for reimbursing labor costs on competitively awarded DoD non-commercial time-and-materials and labor-hour contracts.

EFFECTIVE DATE: September 6, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (CPF), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.