(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).

[FR Doc. E7–17422 Filed 9–5–07; 8:45 am]

BILLING CODE 5001–08–P

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.

[FR Doc. E7–17428 Filed 9–5–07; 8:45 am]

BILLING CODE 5001–08–P

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.

Telephone (703) 602–0326; facsimile (703) 602–7887. Please cite DFARS Case 2006–D030.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 74469 on December 12, 2006, to clarify payment procedures for non-commercial time-and-materials and labor-hour contracts. Two sources submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* One source stated that DoD should not require separate hourly rates for each category of labor performed by the contractor and each subcontractor on every competitively awarded non-commercial time-and-materials and labor-hour contract, since price competition will ensure the hourly rates are fair and reasonable and will eliminate potential abuses. The source also stated that the rationale cited in the interim rule for requiring separate hourly rates failed to address the benefits of adequate price competition and was not relevant to the requirement for separate rates. While not cited as rationale for requiring separate rates, the source stated that DoD may have adopted the rule to ensure subcontract labor meets the qualifications for the labor categories specified in the contract. If this is part of the rationale, DoD already has the ability to accomplish that objective through the subcontract consent provisions of FAR clause 52.244–2, which is mandatory for all time-and-materials contracts that exceed the simplified acquisition threshold. Another source stated that the rule eliminates the flexibility to select the proper approach, considering the advantages and disadvantages of the pricing options for hourly rates.

DoD Response: The FAR provisions authorize agencies to select, and make mandatory, one of the three options for pricing hourly rates. DoD believes it is in the best interest of the Department to select, and make mandatory, the FAR option that requires separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor. DoD believes the rationale cited in the interim rule adequately supports the requirement for separate rates. That rationale is not based on the benefits of adequate price competition, because those benefits are not affected by the requirement for separate hourly rates. The rationale is also not based on a need to ensure the subcontract labor meets the qualifications for the labor categories specified in the contract.

2. *Comment:* One source stated that the requirement for separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor will slow the acquisition process by requiring lengthy contract negotiations to establish separate hourly rates and contract modifications to add new subcontractors. In addition, the requirement will hinder contract performance, will tax DoD's acquisition workforce, and will likely prejudice qualified small and small disadvantaged businesses that only become known to the prime contractor after contract formation. Another source stated that the requirement for separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor will negatively impact contractor invoicing. Hours will have to be billed separately for each subcontractor and the prime for each fund cite. As a result, contractor indirect rates will increase to absorb the additional administrative costs. In addition, the administrative time and expense required to modify the contract to add new subcontractors will be substantial.

DoD Response: The FAR authorizes separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor to recognize there may be circumstances when separate rates are required to adequately protect the Government. As stated in the preamble to the interim rule, DoD believes it is in the best interest of the Department to require separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor. When making that determination, DoD considered the potential administrative burden and costs that may result from the rule. In addition, the rule is not intended to prejudice small and small disadvantaged businesses. If additional subcontractors, including small and small disadvantaged businesses, are needed to perform on the contract after the initial contract award, the contract can be modified to add the hourly rates for the new subcontractors.

3. *Comment:* One source stated that the requirement for separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor makes it difficult to evaluate competing offers during source selection. Offerors will propose separate hourly rates for the prime contractor and each subcontractor by labor category. Offerors will then apply those rates to the projected mix of labor (prime and/or subcontract) to determine the overall estimated price for each labor category. The Government will then use the average labor rate for the labor categories to evaluate competing offers. However, after contract award, the prime contractor can change the mix of labor performed by the prime and subcontractors for each labor category. As a result, the actual rates that will be paid for a labor category may be significantly different than the estimated rates used to evaluate the offer during source selection. The source also stated that the rule does not provide guidance on how to ensure the benefits of competition are maintained and whether cost or pricing data is required when new subcontractors are proposed. With blended fixed hourly rates, competition establishes the reasonableness of the fixed hourly rates, and those rates are used for payment regardless of whether the prime or any subcontractors perform the work. With the required separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor, the benefits of competition may be lost, since the rates on the contract apply only to the labor identified during the proposal stage.

DoD Response: DoD acknowledges that certain pricing challenges will arise from the use of separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor. DoD notes the pricing challenges do not originate with this rule. The FAR provisions also authorize the use of separate hourly rates for labor performed by the contractor and each subcontractor. While the DFARS rule requires reimbursement using a different rate for the prime versus the subcontractor, a similar difference existed prior to the rule. Under the prior FAR provisions, offerors could project a mix of labor (prime and subcontractor). After contract award, the prime could change the actual mix of labor, potentially resulting in significantly different costs than the estimated costs that were used to evaluate the offer during source selection. While there are pricing challenges associated with time-and-materials contracts, those challenges were not created by this rule.

4. *Comment:* One source stated that the rule could lead to the Government directing subcontract orders to reduce contract costs when subcontractors' fixed hourly rates are lower than the prime contractor's fixed hourly rates. If the Government directs subcontract orders, the prime contractor will lose its ability and responsibility to manage its resources and the Government may forfeit certain contract remedies.

DoD Response: In promulgating regulations, the assumption is that contracting personnel will follow the

regulations. Nothing in the rule encourages contracting officers to wrongly direct subcontract orders.

5. *Comment:* One source stated that some of the subcontractors under the prime contract may compete with the prime for other prime contracts. The prime contractor may gain a competitive advantage over these other contractors on future competitions, since the prime will have insight into the composition of their rates.

DoD Response: Nothing in the rule provides prime contractors insight into the composition of their subcontract rates. The prime contractor will bill for subcontract labor using its negotiated fixed hourly rates for the subcontractor.

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 a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This DFARS rule contains a substitute paragraph for use with the solicitation provision at FAR 52.216–29. The FAR provision contains three options for establishing fixed hourly rates on competitively awarded non-commercial time-and-materials and labor-hour contracts. The DFARS rule requires use of the FAR option that provides for the establishment of separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor. The objective of the rule is to use the FAR option for establishing labor rates that is the most suitable for DoD contracts. The rule will apply to all entities interested in receiving DoD competitively awarded non-commercial time-and-materials and labor-hour contracts. The impact on small entities is unknown at this time.

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 216 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

PART 216—[AMENDED]

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 216 and 252, which was published at 71 FR 74469 on December 12, 2006, is adopted as a final rule without change.

[FR Doc. E7–17423 Filed 9–5–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 236

RIN 0750–AF41

Defense Federal Acquisition Regulation Supplement; Congressional Notification of Architect—Engineer Services/Military Family Housing Contracts (DFARS Case 2006–D015)

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 1031(a)(37) of the National Defense Authorization Act for Fiscal Year 2004. Section 1031(a)(37) amended the requirements for submission of a notification to Congress before the award of a contract for architectural and engineering services or construction design in connection with military construction, military family housing, or restoration or replacement of damaged or destroyed facilities.

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–D015.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 58540 on October 4, 2006, to implement Section 1031(a)(37) of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 1031(a)(37) amended the requirements at 10 U.S.C. 2807, for submission of a notification to Congress before the award of a contract for architectural and engineering services or construction design in connection with military construction, military family housing, or restoration or replacement of damaged or destroyed facilities. The amendments increased the contract dollar threshold for submission from $500,000 to $1,000,000; and reduced the time period for submission, from 21 to 14 days before obligation of funds, when the notification is provided in electronic medium.

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 reporting requirements that are internal to the Government.

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 236

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

PART 236—[AMENDED]

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 236, which was published at 71 FR 58540 on October 4, 2006, is adopted as a final rule without change.

[FR Doc. E7–17427 Filed 9–5–07; 8:45 am]

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