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[FR Doc. E6-12756 Filed 8-7-06; 8:45 am]

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**DEPARTMENT OF DEFENSE****48 CFR Parts 204 and 253**

[DFARS Case 2005-D004]

**Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Contract Reporting**

**AGENCY:** Defense Acquisition Regulations System, 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 addressing DoD requirements for reporting of contracting actions. 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:* August 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Sain, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0293; facsimile (703) 602-0350. Please cite DFARS Case 2005-D004.

**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/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule removes DFARS text addressing internal DoD requirements for reporting of contracting actions. These requirements have been relocated to the DFARS companion resource,

Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

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 subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2005-D004.

**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 204 and 253**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 204 and 253 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 253 continues to read as follows:

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

**PART 204—ADMINISTRATIVE MATTERS**

■ 2. Subpart 204.6 is revised to read as follows:

**Subpart 204.6—Contract Reporting**

204.670 Contract action reporting requirements.

Departments and agencies shall report contracting actions in accordance with the requirements at PGI 204.670.

**PART 253—FORMS**

■ 3. Section 253.204-70 is revised to read as follows:

**253.204-70 DD Form 350, Individual Contracting Action Report.**

Follow the instructions at PGI 253.204-70 for completion of DD Form 350.

**253.204-71 [Removed]**

■ 4. Section 253.204-71 is removed.

[FR Doc. E6-12783 Filed 8-7-06; 8:45 am]

BILLING CODE 5001-08-P

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 219**

[DFARS Case 2003-D060]

**Defense Federal Acquisition Regulation Supplement; Threshold for Small Business Specialist Review**

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise text pertaining to DoD implementation of small business programs. 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:* August 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2003-D060.

**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/dars/dfars/transformation/index.htm>.

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

- Deletes an unnecessary general policy statement at DFARS 219.201(a);
- Revises DFARS 219.201(d)(10)(A) to eliminate mandatory requirements for small business specialists to review proposed acquisitions that are under \$100,000 and totally set aside for small business concerns;

- Revises DFARS 219.201(d)(10)(C) for consistency with the procedures at FAR 19.402(a), regarding referral of small business matters to the appropriate party when a Small Business Administration procurement center representative is not assigned to a contracting activity (added at 71 FR 36925, June 28, 2006 (FAC 2005–10)); and

- Deletes text at DFARS 219.201(e) regarding the appointment and functions of DoD small business specialists. Text on this subject has been relocated to the 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 21997 on April 23, 2004. Five sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment: Review of Task Orders.* One respondent stated that the proposed language at 219.201(d)(10)(A)(1), “Within the scope and under the terms of the existing contract,” will not provide for a review of proposed task orders under multiple award contracts. This will preclude small business specialist efforts to steer requirements toward multiple award contracts set aside for small businesses.

*DoD Response:* DoD agrees that task orders should not be excluded from small business specialist review. The phrase “Within the scope and under the terms of the existing contract” has been eliminated from the final rule to make it clear that acquisitions being accomplished through placement of task orders are not excluded from small business specialist review. In addition, the phrase “including orders placed against Federal Supply Schedule contracts,” has been added to 219.201(d)(10)(A) to reinforce this requirement. The wording in the proposed rule had been intended to clarify that modifications to a contract that did not increase the scope of the contract, such as change of address or incremental funding actions, need not be reviewed by the small business specialist. Modifications that increase the scope of a contract or order would, however, be reviewed since these are considered to be acquisitions.

2. *Comment: Opportunities for Participation in Actions Between*

*\$10,000 and \$100,000.* Three respondents stated that actions between \$10,000 and \$100,000 provide significant opportunities for 8(a), HUBZone, and service-disabled veteran-owned small business concerns; and that the proposed rule does not provide small business specialists with an opportunity to review actions that have been set aside for small businesses to identify potential requirements for 8(a), HUBZone, or service-disabled veteran-owned small business concerns.

*DoD Response:* The language in the final rule does not preclude agencies from having a small business specialist review and make recommendations for acquisitions that are totally set aside for small businesses. The rule is intended to permit small business specialist resources to be focused on acquisitions where input from the small business specialist would be of the most benefit to an agency. An agency still may have its small business specialist review total small business set-asides if the agency believes this is necessary to assist contracting officers in identifying opportunities appropriate for particular categories of small businesses. By not requiring that all total small business set-asides over \$10,000 be reviewed, the DFARS rule provides needed flexibility.

3. *Comment: Movement of DFARS Text.* One respondent suggested that movement of DFARS text to PGI creates the perception of a reduced emphasis upon or weakening of the current small business programs.

*DoD Response:* The movement of procedural or informational text from DFARS to PGI is intended to improve the acquisition process by facilitating more efficient change to internal DoD requirements. DoD believes that the changes in this rule are in keeping with numerous other revisions to the DFARS involving movement of text into PGI and, when viewed in the aggregate, do not foster the perception of weakening the commitment to small business programs.

4. *Comment: 8(a) Program Participants.* One respondent recommended that DoD add language to PGI 219.201(e)(vii) to highlight the prohibition against participation by brokers in the 8(a) Program.

*DoD Response:* DFARS 219.201(e)(vii) addresses negotiation and administration of small business subcontracting plans. An 8(a) firm is not required to have a small business subcontracting plan. The clauses in the contract between the Small Business Administration and the 8(a) firm govern the conditions under which the 8(a) firm can subcontract work.

5. *Comment: Concurrence with the Change.* One respondent stated that small business specialist review of actions set aside for small business concerns or placed against another contract is an unnecessary step in the process, and that small business specialists could use their time to better advantage.

*DoD Response:* Noted.

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 pertains to internal DoD procedures for the implementation of small business programs.

## 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 219

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

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

### PART 219—SMALL BUSINESS PROGRAMS

■ 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.

■ 2. Section 219.201 is amended as follows:

■ a. By removing paragraph (a); and

■ b. By revising paragraphs (d)(10) and (e) to read as follows:

#### 219.201 General policy.

(d) \* \* \*

(10) Contracting activity small business specialists perform this function by—

(A) Reviewing and making recommendations for all acquisitions (including orders placed against Federal Supply Schedule contracts) over \$10,000, except those under \$100,000 that are totally set aside for small business concerns in accordance with FAR 19.502–2. Follow the procedures at PGI 219.201(d)(10) regarding such reviews;

(B) Making the review before issuance of the solicitation or contract modification and documenting it on DD Form 2579, Small Business Coordination Record; and

(C) Referring recommendations that have been rejected by the contracting officer to the Small Business Administration (SBA) procurement center representative. If an SBA procurement center representative is not assigned, see FAR 19.402(a).

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(e) For information on the appointment and functions of small business specialists, see PGI 219.201(e).

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[FR Doc. E6-12781 Filed 8-7-06; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 242

[DFARS Case 2003-D051]

#### Defense Federal Acquisition Regulation Supplement; Contract Administration Functions

**AGENCY:** Defense Acquisition Regulations System, 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 addressing functions performed by DoD contract administration offices. 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:* August 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2003-D051.

#### 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/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule revises the list of contract administration functions at DFARS 242.302 to—

- Clarify responsibilities for payment administration and for verification of contractor compliance with earned value management system requirements;
- Delete obsolete text on mobilization production planning surveys; and
- Delete procedures for designation of contract payment offices. Text on this subject has been relocated to the DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 67955 on November 9, 2005. One respondent submitted comments on the proposed rule. The respondent stated that (1) there is a lack of clear regulatory authority for acceptance other than FAR 46.502, which assigns acceptance responsibility to contracting officers; (2) acceptance is not one of the contract administration functions at FAR 42.302; and (3) FAR 46.502, where it refers to delegation of responsibility for acceptance to a contract administration office, errs in its reference to FAR 42.202(g), since refusal of a contract administration delegation is exclusive of actions inferred in performing acceptance when an administration office is assigned. The respondent recommended that, since acceptance actions can be performed on behalf of a contracting officer when a contract is not assigned for administration (e.g., destination acceptance) by an activity other than a contract administration office, DFARS 242.302 should provide coverage of acceptance responsibility when a contracting officer intends that a contract administration office perform acceptance.

DoD does not agree that DFARS 242.302 should be amended to provide coverage of acceptance responsibility when a contracting officer intends that a contract administration office perform acceptance. FAR 42.302 lists the functions that are normally delegated to a contract administration office. Even though acceptance is not specifically

mentioned, it is covered under FAR 42.302(a)(38), which provides for ensuring contractor compliance with contractual quality assurance requirements and references FAR Part 46. In particular, FAR 46.502 provides for delegation of responsibility for acceptance to a contract administration office. However, DoD recognizes that there are times when a contract administration office has been assigned responsibility for ensuring contractor compliance with contract quality assurance requirements, but where actual product acceptance is performed by an activity other than the contract administration office (i.e., destination acceptance). DoD has established a separate DFARS Case, 2005-D024, to address this situation.

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 addresses internal DoD responsibilities for performance of contract administration functions.

##### 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 242

Government procurement.

##### Michele P. Peterson,

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 242 is amended as follows:

#### PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR Part 242 continues to read as follows:

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

■ 2. Section 242.302 is revised to read as follows:

##### 242.302 Contract administration functions.

(a)(4) Also, review and evaluate—  
(A) Contractor estimating systems (see FAR 15.407-5); and

(B) Contractor material management and accounting systems under subpart 242.72.