

software for items or processes acquired under the program.

The commercial procedures authorized by the rule are intended to ease the transition of nontraditional defense contractors from other transactions agreements to standard DoD contracts and, therefore, are expected to improve opportunities for such entities to receive DoD contract awards. In fiscal year 2005, DoD awarded 78 other transaction agreements totaling \$150 million in value. Of these, 22 were awarded to small business concerns, totaling approximately \$40 million in value.

### 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 212

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Accordingly, the interim rule amending 48 CFR part 212, which was published at 69 FR 63329 on November 1, 2004, is adopted as a final rule with the following changes:

### PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 1. The authority citation for 48 CFR part 212 continues to read as follows:

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

■ 2. Section 212.7002-1 is amended by revising paragraph (b) to read as follows:

#### 212.7002-1 Contracts under the program.

\* \* \* \* \*

(b) See 212.7003 for special procedures pertaining to technical data and computer software.

■ 3. Sections 212.7002-2 and 212.7003 are revised to read as follows:

#### 212.7002-2 Subcontracts under the program.

(a) A subcontract for an item or process that does not meet the definition of “commercial item” may be treated as a subcontract for a commercial item, if the subcontract—

- (1) Is for the production of an item or process begun as a prototype project under an other transaction agreement;
- (2) Does not exceed \$50,000,000;
- (3) Is awarded on or before September 30, 2008;
- (4) Is awarded to a nontraditional defense contractor; and

(5) Is either—

- (i) A firm-fixed-price subcontract; or
  - (ii) A fixed-price subcontract with economic price adjustment.
- (b) See 212.7003 for special procedures pertaining to technical data and computer software.

#### 212.7003 Technical data and computer software.

For purposes of establishing delivery requirements and license rights for technical data under 227.7102 and for computer software under 227.7202, there shall be a rebuttable presumption that items or processes acquired under a contract or subcontract awarded in accordance with 212.7002 were developed in part with Federal funds and in part at private expense (i.e., mixed funding).

(a) *Delivery requirements.* Acquire only the technical data and computer software that are necessary to satisfy agency needs. Follow the requirements at 227.7103-1 and 227.7103-2 for technical data, and 227.7203-1 and 227.7203-2 for computer software.

(b) *License rights.* Acquire only the license rights in technical data and computer software that are necessary to satisfy agency needs.

(1) For technical data, use the clauses at 252.227-7013, Rights in Technical Data—Noncommercial Items, and 252.227-7037, Validation of Restrictive Markings on Technical Data.

(2) For computer software, use the clauses at 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, and 252.227-7019, Validation of Asserted Restrictions—Computer Software.

(3) Require the contractor to include the clauses prescribed by paragraphs (b)(1) and (2) of this section in subcontracts awarded in accordance with 212.7002-2.

(4) When the standard license rights for items or processes developed with mixed funding do not provide the minimum rights necessary to satisfy agency needs, negotiate for special license rights in accordance with 227.7103-5(d) and 227.7203-5(d).

[FR Doc. 06-3455 Filed 4-11-06; 8:45 am]

**BILLING CODE 5001-08-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 222

[DFARS Case 2003-D019]

### Defense Federal Acquisition Regulation Supplement; Labor Laws

**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 regarding the application of labor laws to Government contracts. 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 12, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Euclides Barrera, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D019.

#### 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 DFARS changes—

- Update text addressing labor requirements and labor relations matters that affect DoD contracts; and
- Delete text addressing procedures for referral of labor relations matters to the appropriate authorities; for reporting labor disputes and the impact of those disputes on DoD requirements; for

conducting investigations of suspected violations of labor standards; and for preparation of notices and waiver requests relating to certain labor requirements. Text on these subjects 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 70 FR 39978 on July 12, 2005. DoD received no comments on the proposed rule. DoD has adopted the proposed rule as a final rule, with an additional relocation of internal DoD reporting requirements, from DFARS 222.101-3 to 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

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 updates and streamlines DFARS text, but makes no significant change to DoD contracting policy or the application of labor laws to DoD contracts.

### 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 222

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 222 is amended as follows:

### PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 1. The authority citation for 48 CFR part 222 continues to read as follows:

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

■ 2. Section 222.101-1 is revised to read as follows:

#### 222.101-1 General.

Follow the procedures at PGI 222.101-1 for referral of labor relations matters to the appropriate authorities.

■ 3. Section 222.101-3 is revised to read as follows:

#### 222.101-3 General.

Follow the procedures at PGI 222.101-3 for reporting labor disputes.

■ 4. Section 222.101-3-70 is revised to read as follows:

#### 222.101-3-70 Impact of labor disputes on defense programs.

(a) Each department and agency shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements. For guidance on determining the degree of impact, see PGI 222.101-3-70(a).

(b) Each contracting activity shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining that the impact of the labor dispute is significant, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor in accordance with departmental procedures. This reporting requirement is assigned Report Control Symbol DD-AT&L(AR)1153 and must include the information specified at PGI 222.101-3-70(b).

■ 5. Section 222.101-4 is amended by revising paragraph (a)(ii) to read as follows:

#### 222.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) \* \* \*

(ii) Upon the recommendation of the labor advisor, provide a written request for removal of the material to the cognizant contract administration office. Include in the request the information specified at PGI 222.101-4(a)(ii).

\* \* \* \* \*

■ 6. Section 222.102-1 is revised to read as follows:

#### 222.102-1 Policy.

(1) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of Occupational Safety and Health Act (OSHA) regulations to the Department of Labor.

(2) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(3) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor. Any requests for variances or alternative means of compliance with OSHA requirements must be approved by the Occupational Safety and Health Administration of the Department of Labor.

#### 222.404-2 through 222.404-11 [Removed]

■ 7. Sections 222.404-2 through 222.404-11 are removed.

■ 8. Section 222.406-8 is amended by revising paragraph (a), the heading of paragraph (c), and paragraph (d) to read as follows:

#### 222.406-8 Investigations.

(a) Before beginning an investigation, the investigator shall inform the contractor of the general scope of the investigation, and that the investigation will include examining pertinent records and interviewing employees. In conducting the investigation, follow the procedures at PGI 222.406-8(a).

(c) *Contractor notification.*

\* \* \* \* \*

(d) *Contracting officer's report.*

Forward a detailed enforcement report or summary report to the agency head in accordance with agency procedures. Include in the report, as a minimum, the information specified at PGI 222.406-8(d).

#### 222.407 [Removed]

■ 9. Section 222.407 is removed.

#### 222.804 through 222.805 [Removed]

■ 10. Sections 222.804 through 222.805 are removed.

■ 11. Section 222.807 is revised to read as follows:

#### 222.807 Exemptions.

(c) Follow the procedures at PGI 222.807(c) when submitting a request for an exemption.

#### 222.1003-7 [Removed]

■ 12. Section 222.1003-7 is removed.

■ 13. Section 222.1008-2 is revised to read as follows:

#### 222.1008-2 Preparation of SF 98a.

Follow the procedures at PGI 222.1008-2 regarding use of the Service Contract Act Directory of Occupations when preparing the SF 98a.

■ 14. Section 222.1014 is revised to read as follows:

#### 222.1014 Delay of acquisition dates over 60 days.

Follow the procedures at PGI 222.1014 for submission of update requests to the Wage and Hour Division.

■ 15. Subpart 222.13 is revised to read as follows:

#### Subpart 222.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

Sec.

222.1305 Waivers.

222.1308 Complaint procedures.

222.1310 Solicitation provision and contract clauses.

### Subpart 222.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

#### 222.1305 Waivers.

(c) Follow the procedures at PGI 222.1305(c) for submission of waiver requests.

#### 222.1308 Complaint procedures.

The contracting officer shall—

- (1) Forward each complaint received as indicated in FAR 22.1308; and
- (2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

#### 222.1310 Solicitation provision and contract clauses.

(a)(1) Use of the clause at FAR 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, with its paragraph (c), Listing Openings, also satisfies the requirement of 10 U.S.C. 2410k.

■ 16. Section 222.1406 is revised to read as follows:

#### 222.1406 Complaint procedures.

The contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

#### 222.7100 and 222.7200 [Removed]

■ 17. Sections 222.7100 and 222.7200 are removed.

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BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 225, 229, and 252

[DFARS Case 2004-D012]

#### Defense Federal Acquisition Regulation Supplement; Prohibition of Foreign Taxation on U.S. Assistance Programs

**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 a statutory prohibition on foreign taxation under contracts funded by U.S. assistance programs. The rule addresses the responsibilities of the contractor and the contracting officer regarding the prohibition.

**DATES:** *Effective Date:* April 12, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Debra Overstreet, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0310; facsimile (703) 602-0350. Please cite DFARS Case 2004-D012.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 70 FR 57191 on September 30, 2005, to implement Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108-7); Section 506 of Division D of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199); and Section 506 of Division D of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447). These statutes require that a bilateral agreement providing for U.S. assistance to a foreign country must specify that the U.S. assistance shall be exempt from taxation by the foreign government. Therefore, the foreign government is prohibited from imposing taxes on commodities acquired under contracts funded by such U.S. assistance. This DFARS rule addresses the responsibilities of the contractor and the contracting officer regarding the prohibition.

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 administrative notification requirements of the rule are expected to affect less than 10 contracts per year.

##### C. Paperwork Reduction Act

The information collection requirements of the rule do not reach the threshold for requiring Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 225, 229, and 252

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 225, 229, and 252, which was published at 70 FR 57191 on September 30, 2005, is adopted as a final rule without change.

[FR Doc. 06-3453 Filed 4-11-06; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 232 and 252

[DFARS Case 1990-037]

#### Defense Federal Acquisition Regulation Supplement; Incremental Funding of Fixed-Price Contracts

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

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address the use of incrementally funded fixed-price contracts. The rule contains a contract clause for use in those situations where incremental funding of fixed-price contracts is permitted.

**DATES:** *Effective Date:* April 12, 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) 602-2022; facsimile (703) 602-0350. Please cite DFARS Case 1990-037.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This rule revises and finalizes the interim rule published at 58 FR 46091 on September 1, 1993, regarding incremental funding of fixed-price contracts. Prior to the issuance of the interim rule, incrementally funded fixed-price contracts had been used in limited situations throughout DoD for a number of years. This technique permitted DoD to award fixed-price contracts in specific circumstances