

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 policy for the acquisition of telecommunications services.

### 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 239

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 239 is amended as follows:

#### PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 1. The authority citation for 48 CFR Part 239 continues to read as follows:

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

■ 2. Section 239.7407 is added to read as follows:

##### 239.7407 Type of contract.

When acquiring telecommunications services, the contracting officer may use a basic agreement (see FAR 16.702) in conjunction with communication service authorizations. When using this method, follow the procedures at PGI 239.7407.

##### 239.7407–1 and 239.7407–2 [Removed]

■ 3. Sections 239.7407–1 and 239.7407–2 are removed.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 246

[DFARS Case 2003–D027]

#### Defense Federal Acquisition Regulation Supplement; Quality Assurance

**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 pertaining to Government contract quality assurance requirements. 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:* May 12, 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–D027.

#### 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 and clarify requirements for Government contract quality assurance and use of warranties;
- Delete unnecessary definitions and unnecessary text on technical requirements matters, responsibilities of contract administration offices, and

material inspection and receiving reports; and

- Delete text on preparation of quality assurance instructions, use of quality inspection approval stamps, and information on types of quality evaluation data. 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 29710 on May 24, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed 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 updates and streamlines DFARS text, but makes no significant change to DoD policy regarding contract quality assurance requirements.

### 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 246

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 246 is amended follows:

#### PART 246—QUALITY ASSURANCE

■ 1. The authority citation for 48 CFR Part 246 continues to read as follows:

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

##### 246.101 [Removed]

■ 2. Section 246.101 is removed.

■ 3. Section 246.102 is amended by revising paragraph (1) to read as follows:

##### 246.102 Policy.

\* \* \* \* \*

(1) Develop and manage a systematic, cost-effective Government contract quality assurance program to ensure that contract performance conforms to

specified requirements. Apply Government quality assurance to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

\* \* \* \* \*

■ 4. Section 246.103 is revised to read as follows:

**246.103 Contracting office responsibilities.**

(1) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(2) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements. Follow the procedures at PGI 246.103(2) for preparation of instructions.

**246.104 and 246.203 [Removed]**

■ 5. Sections 246.104 and 246.203 are removed.

■ 6. Section 246.406 is amended by revising paragraph (2) to read as follows:

**246.406 Foreign governments.**

\* \* \* \* \*

(2) *International military sales (non-NATO)*. Departments and agencies shall—

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications; and

(iii) Delegate quality assurance to the host government when satisfactory services are available.

\* \* \* \* \*

■ 7. Section 246.408–71 is amended by revising paragraph (c) to read as follows:

**246.408–71 Aircraft.**

\* \* \* \* \*

(c) The CAO shall ensure that the contractor possesses any required FAA certificates prior to acceptance.

**246.408–72 [Removed]**

■ 8. Section 246.408–72 is removed.

■ 9. Sections 246.470–1 and 246.470–2 are revised to read as follows:

**246.470–1 Assessment of additional costs.**

(a) Under the clause at FAR 52.246–2, Inspection of Supplies—Fixed-Price, after considering the factors in

paragraph (c) of this subsection, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative shall recommend that the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the applicable Federal agency, foreign military sale, or public rate in effect at the time of the delay, reinspection, or retest.

(b) If the contracting officer agrees with the QAR, the contracting officer shall—

(1) Notify the contractor, in writing, of the determination to exercise the Government's right under the clause at FAR 52.246–2, Inspection of Supplies—Fixed-Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR Subpart 32.6.

(c) In making a determination to assess additional costs, the contracting officer shall consider—

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

**246.470–2 Quality evaluation data.**

The contract administration office shall establish a system for the collection, evaluation, and use of the types of quality evaluation data specified in PGI 246.470–2.

**246.470–3 through 246.470–5 [Removed]**

■ 10. Sections 246.470–3 through 246.470–5 are removed.

■ 11. Section 246.472 is revised to read as follows:

**246.472 Inspection stamping.**

(a) DoD quality inspection approval marking designs (stamps) may be used for both prime contracts and subcontracts. Follow the procedures at PGI 246.472(a) for use of DoD inspection stamps.

(b) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector shall use NASA quality status stamps in accordance with current NASA requirements.

■ 12. Section 246.601 is added to read as follows:

**246.601 General.**

See Appendix F, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of—

(1) The Material Inspection and Receiving Report (DD Form 250 series); and

(2) Supplier's commercial shipping/packing lists used to evidence Government contract quality assurance.

**246.670 and 246.671 [Removed]**

■ 13. Sections 246.670 and 246.671 are removed.

**246.702 and 246.703 [Removed]**

■ 14. Sections 246.702 and 246.703 are removed.

■ 15. Sections 246.704 through 246.706 are revised to read as follows:

**246.704 Authority for use of warranties.**

(1) The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(i) Commercial items (*see* FAR 46.709);

(ii) Technical data, unless the warranty provides for extended liability (*see* 246.708);

(iii) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (*see* 246.202–4); or

(iv) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

(2) The chief of the contracting office shall approve the use of a warranty only when the benefits are expected to outweigh the cost.

**246.705 Limitations.**

(a) In addition to the exceptions provided in FAR 46.705(a), warranties in the clause at 252.246–7001, Warranty of Data, may be used in cost-reimbursement contracts.

**246.706 Warranty terms and conditions.**

(b)(5) *Markings*. For non-commercial items, use MIL–STD–129, Marking for Shipments and Storage, and MIL–STD–130, Identification Marking of U.S. Military Property, when marking warranty items.

■ 16. Section 246.710 is amended by revising paragraph (1) to read as follows:

(1) Use a clause substantially the same as the clause at 252.246-7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227-7013,

Rights in Technical Data and Computer Software, when there is a need for greater protection or period of liability than provided by the inspection and

warranty clauses prescribed in FAR Part 46.

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