

(vi) List and summarize, if seeking the exemption for rural telephone cooperatives pursuant to § 1.2110, all documentation to establish eligibility pursuant to the factors listed under § 1.2110(b)(3)(iii)(A).

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 204, 212, 213, and 252

[DFARS Case 2003-D040]

#### Defense Federal Acquisition Regulation Supplement; Central Contractor Registration

AGENCY: 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 remove policy on Central Contractor Registration (CCR) that duplicated policy found in the Federal Acquisition Regulation (FAR). The rule also addresses requirements for use of Commercial and Government Entity (CAGE) codes in DoD contracts.

**EFFECTIVE DATE:** September 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2003-D040.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 68 FR 64557 on November 14, 2003, to remove DFARS requirements for contractors to register in the CCR database, since policy on this subject had been added to the FAR. The interim rule also addressed requirements for inclusion of CAGE codes on contracts and in the CCR database to accommodate DoD payment systems.

Three sources submitted comments on the interim DFARS rule. A discussion of the comments is provided below.

1. *Comment: Provision of DUNS numbers and CAGE codes.* One respondent stated that the interim rule appeared to require contracting officers to provide both a DUNS number and a CAGE code on contractual documents submitted to the payment office, whereas the previous DFARS coverage

required either a DUNS number or a CAGE code.

*DoD Response:* The final rule revises DFARS 204.1103(e) to clarify that contracting officers must include the contractor's CAGE code on contractual documents transmitted to the payment office, instead of the DUNS number.

2. *Comment: Timely assignment of CAGE codes.* One respondent recommended adding a statement to the rule to address the need for the Defense Logistics Information Service to assign CAGE codes in a timely manner, to avoid payment delays and payment of interest.

*DoD Response:* DoD agrees that timely assignment of CAGE codes is important. However, such a statement is considered unnecessary for inclusion in the DFARS.

3. *Comment: Contractor failure to provide correct or current CCR information.* One respondent provided an example of a contractor's failure to maintain current information in the CCR database.

*DoD Response:* Contractors are responsible for maintaining CCR information and are required to review and update their information annually to ensure it is current, accurate, and complete.

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 adds no new requirements for contractors. The rule removes DFARS text on Central Contractor Registration that has become obsolete as a result of policy that was added to the FAR, and retains existing requirements for use of Commercial and Government Entity codes in 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 204, 212, 213, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 204, 212, 213, and 252, which was published at 68 FR 64557 on November 14, 2003, is adopted as a final rule with the following change:

#### PART 204—ADMINISTRATIVE MATTERS

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

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

■ 2. Section 204.1103 is revised to read as follows:

##### 204.1103 Procedures.

■ (e) On contractual documents transmitted to the payment office, provide the Commercial and Government Entity code, instead of the DUNS number or DUNS+4 number, in accordance with agency procedures.

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 209, 217, and 246

[DFARS Case 2003-D101]

#### Defense Federal Acquisition Regulation Supplement; Quality Control of Aviation Critical Safety Items and Related Services

AGENCY: 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 implement Section 802 of the National Defense Authorization Act for Fiscal Year 2004. Section 802 requires DoD to establish a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items.

**EFFECTIVE DATE:** September 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D101.

**SUPPLEMENTARY INFORMATION:****A. Background**

DoD published an interim rule at 69 FR 55987 on September 17, 2004, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 802 requires DoD to prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items. The interim rule identified the responsibilities of the head of the design control activity with regard to quality control of aviation critical safety items and related services.

Six respondents submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* One respondent suggested there might be confusion between the head of the contracting activity for the procuring activity of an aviation critical safety item and the head of the contracting activity for the design control activity. A proposed change was suggested to clarify this issue.

*DoD Response:* The final rule amends DFARS 209.270-3(a) to clarify that the policy in that paragraph applies to the head of the contracting activity responsible for procuring an aviation critical safety item.

2. *Comment:* Two respondents recommended clarification as to who has responsibility for identifying and determining aviation critical safety items.

*DoD Response:* The final rule adds a paragraph at DFARS 209.270-4(a)(1) to clarify that the head of the design control activity is responsible for identifying items that meet the criteria for designation as aviation critical safety items.

3. *Comment:* Six respondents requested clarification as to whether the authority to disposition minor nonconformances in aviation critical safety items can be delegated, and recommended that the DFARS state that delegation can be authorized.

*DoD Response:* The final rule amends DFARS 246.407(S-70) to state that acceptance of minor nonconformances in aviation critical safety items may be delegated as determined appropriate by the design control activity.

4. *Comment:* Two respondents requested clarification as to whether the rule applies only to Government contract awards or if prime contractors must obtain design control activity approval of subcontracts for aviation critical safety items.

*DoD Response:* Clarification of this issue in the DFARS rule is considered unnecessary. Unless otherwise stated, DFARS policy applies to contracts awarded by the Government.

5. *Comment:* One respondent recommended clarification of the connection between the DFARS rule and qualified products list policies.

*DoD Response:* Clarification of this issue in the DFARS rule is considered unnecessary. However, DoD is presently drafting a joint service/agency instruction that will address this issue.

6. *Comment:* One respondent asked whether the rule would apply to commercial items acquired under FAR Part 12 or commercial aviation systems and components governed by Federal Aviation Administration (FAA) regulations.

*DoD Response:* The draft joint service/agency instruction will make it clear that aviation critical safety item policies do not apply to commercial aircraft or subsystems purchased and maintained in accordance with FAA regulations unless specifically required by the military department.

7. *Comment:* Three respondents questioned whether there would be drawing changes and new reporting requirements as a result of the rule and how the costs associated with these changes would be reimbursed.

*DoD Response:* The rule contains no requirements for drawing changes or new reporting. Such changes would be determined on a case-by-case basis or would be addressed in policy issued by the requirements community.

8. *Comment:* Two respondents expressed concern that the rule would result in changes to approved quality systems, additional requirements for disposal of critical safety items, and additional acceptance testing.

*DoD Response:* The rule does not address these issues. Such changes would be determined on a case-by-case basis or would be addressed in policy issued by the requirements community.

9. *Comment:* One respondent recommended that DoD look for synergy between the unique item identification policy and aviation critical safety item policy.

*DoD Response:* DoD is looking at unique item identification as a facilitator for product identification, serialization, and tracking.

10. *Comment:* Two respondents expressed concern that the rule could have a significant economic impact on small businesses due to (1) new qualification standards established by the heads of the design control activities, and (2) significant differences that exist between contractor/original

equipment manufacturer critical component designations and DoD critical safety item designations.

*DoD Response:* These issues are addressed in the final regulatory flexibility analysis.

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. The analysis is summarized below. A copy of the analysis may be obtained from the point of contact specified herein.

The objective of the rule is to give the head of the design control activity responsibility for the quality control of aviation critical safety items, including identifying and designating these items, and approval of sources, products, and offerors prior to contract award. Two respondents expressed concern that there could be significant economic impact on small businesses or original equipment manufacturers (OEMs) due to (1) new qualification standards established by the heads of design control activities, and (2) significant differences that exist between contractor/OEM critical component designations and DoD critical safety item designations. If a small business has previously been approved to furnish an aviation critical safety item, has furnished the item within the past 3 years, and has a good quality track record, there should be no impact on that business. Many small businesses fall into this category. If a small business did not go through the approval process but furnished the aviation critical safety item within the past 3 years, the Government will check the company's quality track record and test samples from DoD inventory to ensure conformity. When the company next receives a contract for the aviation critical safety item, the Government will request commonly generated manufacturing, quality, and inspection information. The 3-year timeframe is consistent with established Government and nongovernment qualification requirements, particularly those relating to the aerospace sector. DoD Qualified Products List and Qualified Manufacturers List procedures require revalidation every 2 years. The Society of Automotive Engineers standard AS9102 on Aerospace First Article Inspection requires reinspection of an aerospace part if there has been a lapse in production for 2 years or as specified by the customer. The Federal Aviation Administration's Advisory Circular 00-

56A, Voluntary Industry Distributor Accreditation Program, establishes that civil aerospace parts distributors may not exceed the 24-month requirement if they were accredited prior to revision of the circular and that accredited distributors shall be audited at least once every 36 months. The Aviation Suppliers Association Quality System Standard ASA-100 requires an accreditation audit every 36 months and a surveillance audit during the 36-month period. The National Aerospace and Defense Contractors Accreditation Program (NADCAP)—Performance Review Institute (PRI) establishes product qualification to be generally valid for 3 years or as determined by the specific Qualified Products Group.

In calendar year 2003, the year before the interim rule took effect, 62.8% of Defense Logistics Agency (DLA) contracts for currently identified aviation critical safety items were awarded to small businesses. During the first 8 months of calendar year 2005 (the year after the interim rule became effective), 62.9% of DLA contracts for critical safety items were awarded to small businesses. There has been no significant impact on contract awards to small businesses as a result of the DFARS rule.

Regardless of whether the contractor or DoD designates an item as a critical safety item, the contractor is required to deliver conforming products. This is especially important when the consequences of item failure could be catastrophic. Small businesses that understand the design intent of a critical safety item, and the item's application in the weapon system, its critical attributes, and its failure implications, should have high-performing manufacturing, supplier management, and quality control processes. While the contractor/OEM and DoD may have different methods of categorizing parts, the critical safety item designation is not expected to have a significant cost impact on small businesses with approved quality 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 209, 217, and 246

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Accordingly, the interim rule amending 48 CFR parts 209, 217, and 246, which was published at 69 FR 55987 on September 17, 2004, is adopted as a final rule with the following changes:

#### PART 209—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for 48 CFR parts 209 and 246 continues to read as follows:

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

■ 2. Section 209.270-3 is amended by revising paragraph (a) to read as follows:

##### 209.270-3 Policy.

(a) The head of the contracting activity responsible for procuring an aviation critical safety item may enter into a contract for the procurement, modification, repair, or overhaul of such an item only with a source approved by the head of the design control activity.

\* \* \* \* \*

■ 3. Section 209.270-4 is amended by removing the introductory text and revising paragraph (a) to read as follows:

##### 209.270-4 Procedures.

(a) The head of the design control activity shall—

(1) Identify items that meet the criteria for designation as aviation critical safety items. See additional information at PGI 209.270-4;

(2) Approve qualification requirements in accordance with procedures established by the design control activity; and

(3) Qualify and identify aviation critical safety item suppliers and products.

\* \* \* \* \*

#### PART 246—QUALITY ASSURANCE

■ 4. Section 246.407 is amended by revising paragraph (S-70) to read as follows:

##### 246.407 Nonconforming supplies or services.

\* \* \* \* \*

(S-70) The head of the design control activity is the approval authority for acceptance of any nonconforming aviation critical safety items or nonconforming modification, repair, or

overhaul of such items (see 209.270). Authority for acceptance of minor nonconformances in aviation critical safety items may be delegated as determined appropriate by the design control activity. See additional information at PGI 246.407.

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### DEPARTMENT OF DEFENSE

#### 48 CFR Part 219

[DFARS Case 2005-D020]

#### Defense Federal Acquisition Regulation Supplement; Extension of Partnership Agreement—8(a) Program

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect an extension in the expiration date of a partnership agreement between DoD and the Small Business Administration (SBA). The partnership agreement permits DoD to award contracts to 8(a) Program participants on behalf of SBA.

**EFFECTIVE DATE:** September 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2005-D020.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

By partnership agreement dated February 1, 2002, between the SBA and DoD, the SBA delegated to DoD its authority to enter into contracts under Section 8(a) of the Small Business Act (15 U.S.C. 637(a)). The expiration date of the partnership agreement has been extended from September 30, 2005, to September 30, 2006. This final rule amends DFARS 219.800 to reflect the extension.

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