

contract directly for services up to the simplified acquisition threshold per project after written review by GSA. Agencies contracting directly must provide GSA with complete documentation of the scope of work and contract specifications at the time of submission. Each project shall include appropriate reviews by the regional safety staff. If contracting for security systems, agencies must submit the design work for regional Federal Protective Service Division review. Agencies shall be responsible for inspecting and certifying satisfactory completion of the ordered work. All work must conform to GSA fire and safety standards. GSA at anytime has the authority to make inspections and require correction if the project is found not in compliance with GSA reviews or fire and safety standards. As-built drawings must be submitted to GSA's buildings manager within 30 days of completion of the work.

Dated: December 13, 1996.

David J. Barram,  
Acting Administrator.

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 216

[DFARS Case 96-D327]

#### Defense Federal Acquisition Regulation Supplement; MILCON—Environmental Restoration

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

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add an exception to the restriction on the use of cost-plus-fixed-fee contracts for military construction. The exception applies to contracts for environmental restoration at installations that are being closed or realigned where payments are made from a Base Realignment and Closure Account.

**EFFECTIVE DATE:** January 8, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131. Telefax (703) 602-0350. Please cite DFARS Case 96-D327 in all correspondence related to this case.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends DFARS 216.306 to implement Section 101 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). Section 101 continues to restrict the use of cost-plus-fixed-fee contracts for military construction, but provides an exception for contracts for environmental restoration at installations that are being closed or realigned where payments are made from a Base Realignment and Closure Account.

##### B. Regulatory Flexibility Act

This final rule does not constitute a significant DFARS revision within the meaning of FAR. 1.501 and Public Law 98-577 and publication for public consent is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96-D327 in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public 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 216

Government procurement.  
Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 216 is amended as follows:

#### PART 216—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Part 216 continues to read as follows:

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

2. Section 216.306 is revised to read as follows:

##### 216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations.*

(i) Except as provided in paragraph (c)(ii) of this section, annual military construction appropriations acts prohibit the use of cost-plus fixed-fee contracts that—

- (A) Are funded by a military construction appropriations act;
- (B) Are estimated to exceed \$25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The prohibition in paragraph (c)(i) of this section does not apply—

(A) To contracts for environmental restoration at an installation that is being closed or realigned where payments are made from a Base Realignment and Closure Account; or

(B) To contracts specifically approved in writing, setting forth the reasons therefore, in accordance with the following:

(1) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(2) The Secretary of Defense or designee must approve such contracts are not for environmental work only or are for environmental work classified as construction.

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### 48 CFR Part 239

[DFARS Case 96-D017]

#### Defense Federal Acquisition Regulation Supplement; Information Technology Management Reform Act (ITMRA)

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

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise guidance regarding the acquisition of information technology, for conformance with recent amendments to the Federal Acquisition Regulation.

**DATES:** Effective date: January 8, 1997

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 10, 1997, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Michael Mutty, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax (703) 602-0350. Please cite DFARS Case 96-D017 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Mutty, telephone (703) 602-0131.

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

The Federal Acquisition Regulation (FAR) was amended on August 8, 1996 (61 FR 41467; Federal Acquisition Circular 90-41, Item I), to implement Division E of the Information Technology Management Reform Act of 1996 (Public Law 104-106). This interim rule amends DFARS Part 239 for conformance with the August 8, 1996, FAR amendments.

**B. Regulatory Flexibility Act**

This interim rule is not expected to 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 primarily pertains to internal Government considerations regarding the acquisition of information technology. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and cite DFARS Case 96-D017 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this interim rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule amends the DFARS for conformance with the FAR implementation of Division E of the Information Technology Management Reform Act of 1996 (Pub. L. 104-106), which was effective upon its publication in the Federal Register on August 8, 1996. However, public comments received in response to the publication of this interim rule will be considered in formulating the final rule.

**List of Subjects in 48 CFR Part 239**

Government procurement.  
Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 239 is amended as follows:

**PART 239—ACQUISITION OF INFORMATION RESOURCES**

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.

**239.001 through 239.002 [Removed]**

2. Sections 239.001 through 239.002 are removed.  
3. Subpart 239.70 is revised to read as follows:

**Subpart 239.70—Exchange or Sale of Information Technology (IT)**

Sec.  
239.7000 Scope of subpart.  
239.7001 Policy.  
239.7002 Conditions for using exchange/sale.  
239.7003 Procedures.

**Subpart 239.70 Exchange or Sale of Information Technology (IT)****239.7000 Scope of subpart.**

This subpart contains unique DoD procedures for the exchange or sale of information technology using the exchange authority of the General Services Administration (GSA). This subpart only applies to items with an original acquisition cost of \$1,000,000 or more.

**239.7001 Policy.**

Agencies should consider exchange/sale when replacing Government-owned information technology. Exchange/sale is a method of—

(a) Transferring the equipment to be replaced to—  
(1) Another Government agency, with reimbursement (sale); or  
(2) The supplier of the replacement information technology for a trade-in allowance (exchange).

(b) Applying the proceeds of sale or the exchange allowance toward the purchase of replacement information technology.

**239.7002 Conditions for using exchange/sale.**

(a) The requiring activity must make a written determination that—  
(1) The trade-in allowance of the exchange or the proceeds of the sale will be applied to acquire the replacement information technology; and  
(2) The exchange/sale transaction will foster the economic and efficient

accomplishment of a continuing requirement.

(b) The replacement equipment must be information technology—

(1) Similar to the resource being sold or exchanged;  
(2) Which will satisfy the continuing requirement currently met by the resource being replaced.

**239.7003 Procedures.**

(a) Comply with—  
(1) This subpart;  
(2) Subpart 217.70; and  
(3) The Defense Automation Resources Management Manual.  
(b) Solicit offers both on an exchange (trade-in for allowance) or no exchange (no trade-in) basis.

(c) Retain the option to exercise any exchange offer at the time of award.

(d) List and describe the information technology to be exchanged in the solicitation. At a minimum include—

(1) A brief description of each item;  
(2) Name of manufacturer;  
(3) Equipment type;  
(4) Model number; and  
(5) The condition code and explanation of the code.

(e) Allow sufficient time in the contracting schedule to permit screening within the Government of the information technology to be exchanged prior to contract award.

(f) Immediately upon receipt of offers, determine the highest exchange offer (if any) and use it to initiate screening under the Defense Automation Resources Management Manual.

(1) Send an SF 120, Report of Excess Personal Property, to the Defense Automation Resources Management Program Division (ATTN: DARMP Division). Prominently display the following note on the original and five copies of the SF 120:

Exchange/"Sale" Property

A written administrative determination has been (will be) made to apply the exchange allowance or proceeds of "sale" to the acquisition of similar items.

(2) Include the following additional information with the SF 120:

(i) The identity of the offeror of the exchange;  
(ii) The type of replacement equipment;  
(iii) The acquisition method for the replacement equipment;  
(iv) The anticipated purchase price of the replacement equipment; and  
(v) The name and telephone number of the contracting officer.  
(g) Evaluate offers using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made

whether or not the replaced information technology is exchanged.

(h) Before a contract is awarded, consider the results of the screening. Do not make an exchange if another Government agency wants to acquire the replaced equipment.

(1) If another agency is going to acquire the replaced equipment, do not include the exchange allowance in the contract price.

(2) The actual sale price to the agency acquiring the replaced equipment will be the exchange allowance (if any) of the successful offeror.

(i) If no Government agency wants to acquire the replaced equipment, the contract price shall include the exchange allowance, if any.

(j) If no exchange allowance was offered by the successful contractor, see the Defense Automation Resources Management Manual for disposal instructions.

**239.7102-3 [Amended]**

4. Section 239.7102-3 is amended by removing the paragraph (a) designation and by removing paragraph (b).

**239.7201 [Removed and Reserved]**

5. Section 239.7201 is removed and reserved.

6. Section 239.7202 is amended by revising paragraphs (a) and (b) to read as follows:

**239.7202 Waivers.**

(a) The Secretary of Commerce has delegated to the Secretary of Defense the authority to waive FIP standards, in accordance with procedures established by the Secretary of Commerce. The Secretary of Defense redelegated that waiver authority to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)). The ASD(C3I) has redelegated to the senior information technology official of each military department the authority to approve waivers to FIP standards that are applicable to military department requirements.

Waivers to FIP standards that are applicable to the requirements of DoD components outside the military

departments must be approved by the ASD(C3I).

(b) Contracting officers shall ensure that all applicable FIP standards are incorporated into solicitations, except for those FIP standards for which the requiring activity has obtained a waiver from the appropriate military department or DoD senior information technology official.

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7. Section 239.7302 is amended by revising paragraph (a), the introductory text of paragraph (b), and paragraph (b)(2) to read as follows:

**239.7302 Approvals and screening.**

(a) The requirements of this section highlight the redistribution requirements of the Defense Automation Resources Management Manual, and are in addition to those at FAR 45.302.

(b) If the contractor proposes acquiring ADPE subject to 239.7301(a) (1) and (2), and the unit acquisition cost is \$50,000 or more—

\* \* \* \* \*

(2) The administrative contracting officer—

(i) Submits a request for screening the requirement against the pool of Government-owned ADPE to determine if available excess equipment could satisfy the contractor's needs. The request should include the contractor's supporting documentation. The request is sent to—Defense Information Systems Agency, Chief Information Officer, ATTN: Defense Automation Resources Management, Program Division (D03D), 701 S. Courthouse Road, Arlington, VA 22204-2199; or

(ii) Uses the Automation Resources Management System (ARMS) to screen on-line. System access may be requested from the Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program (DARMP) Division. Customers may apply for an ARMS Account Number by calling the DARMP Help Desk at (703) 696-1904; DSN 426-1904, FAX (703) 696-1908; E-mail DARMP@NCR.DISA.MIL.

(iii) Documents the result of the System query.

(iv) Upon receipt of and based on screening results from DARMP, advises the contractor that excess ADPE—

(A) Is available pursuant to the Defense Automation Resources Management Manual; or

(B) Is not available and the contractor may proceed with acquisition of the equipment.

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8. Section 239.7304 is amended by revising paragraph (c) to read as follows:

**239.7304 Purchase option credits.**

\* \* \* \* \*

(c) Report purchase option credits as prescribed in the Defense Automation Resources Manual.

9. Section 239.7400 is revised to read as follows:

**239.7400 Scope.**

This subpart prescribes policy and procedures for acquisition of telecommunications services and maintenance of telecommunications security. Telecommunications services may also meet the definition of information technology.

**239.7402 [Amended]**

10. Section 239.7402 is amended in paragraph (b)(4) by removing the reference "FAR 45.303-1(a)" and inserting the reference "FAR 45.303" in its place.

11. Section 239.7501 is revised to read as follows:

**239.7501 Major automated information systems restriction.**

Section 8028 of the FY 1992 Defense Appropriations Act (Pub. L. 102-172) and similar sections of the FY 1993, FY 1994, and FY 1995 Defense appropriations acts prohibit use of DoD appropriations for acquisition of major automated information systems, unless the systems have successfully completed oversight reviews required by DoD regulations.

**239.7501-1 and 239.7501-2 [Removed]**

12. Sections 239.7501-1 and 239.7501-2 are removed.

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