

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97-D016.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final 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 201 and 230

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 201 and 230 are amended as follows:

1. The authority citation for 48 CFR Parts 201 and 230 continues to read as follows:

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

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.402 is amended by revising paragraph (1) introductory text and paragraph (1)(i); and in paragraph (3)(iii) by removing the period at the end and adding a semicolon in its place. The revised text reads as follows:

201.402 Policy.

(1) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology), USD(A&T)DP, is the approval authority within DoD for—

(i) Any individual deviation from—

(A) FAR 3.104, Procurement Integrity, or DFARS 203.104, Procurement Integrity;

(B) FAR Subpart 27.4, Rights in Data and Copyrights, or DFARS Subpart 227.4, Rights in Data and Copyrights;

(C) FAR Part 30, Cost Accounting Standards Administration, or DFARS Part 230, Cost Accounting Standards Administration;

(D) FAR Subpart 31.1, Applicability, or DFARS Subpart 231.1, Applicability (contract cost principles);

(E) FAR Subpart 31.2, Contracts with Commercial Organizations, or DFARS Subpart 231.2, Contracts with Commercial Organizations; or

(F) FAR Part 32, Contract Financing (except Subparts 32.7 and 32.8 and the payment clauses prescribed by Subpart 32.1), or DFARS Part 232, Contract Financing (except Subparts 232.7 and 232.8).

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PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

3. The heading of Part 230 is revised to read as set forth above.

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DEPARTMENT OF DEFENSE**48 CFR Parts 211 and 253**

[DFARS Case 98-D022]

Defense Federal Acquisition Regulation Supplement; Specifications and Standards Requisition

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove references to an obsolete form that formerly was used for ordering specifications and standards.

EFFECTIVE DATE: February 23, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSS (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 98-D022.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends DFARS 211.201 and Part 253 to remove references to DD Form 1425, Specifications and Standards Requisition, which is now obsolete. The rule also updates the address for submission of requests to purchase specifications and standards.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98-D022.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final 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 211 and 253

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 211 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 211 and 253 continues to read as follows:

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

PART 211—DESCRIBING AGENCY NEEDS

2. Section 211.201 is amended in paragraph (b) by removing the word "which" and adding in its place the word "that", and by revising the introductory text of paragraph (d) to read as follows:

211.201 Identification and availability of specifications.

* * * * *

(d) The AMSDL, all unclassified specifications and standards listed in the DoDISS, and data item descriptions listed in the AMSDL also may be purchased from the Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094. Include with the request—

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PART 253—FORMS

3. The note at the end of Part 253 is amended by removing the entry "243.303-1425 Specifications and Standards Requisition."

[FR Doc. 99-4340 Filed 2-22-99; 8:45 am]

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DEPARTMENT OF DEFENSE**48 CFR Parts 212, 225, and 252**

[DFARS Case 98-D305]

Defense Federal Acquisition Regulation Supplement; People's Republic of China

AGENCY: Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: The Director of Defense Procurement has issued an interim rule

amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8120 of the DoD Appropriations Act for fiscal year 1999. Section 8120 places restrictions on the award of contracts to companies owned or partially owned by the People's Republic of China or the People's Liberation Army of the People's Republic of China.

DATES: *Effective date:* February 23, 1999.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before April 26, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax (703) 602-0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 98-D305 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98-D305 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 212.301, adds a new section at 225.771, and adds a new solicitation provision at 252.225-7017. The rule implements Section 8120 of the DoD Appropriations Act for fiscal year 1999 (Pub. L. 105-262). Section 8120 provides that no funds appropriated under Title III (Procurement) or Title IV (Research, Development, Test and Evaluation) of the Act may be used to enter into or renew a contract with any company owned or partially owned by the People's Republic of China or the People's Liberation Army of the People's Republic of China.

B. Regulatory Flexibility Act

The 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 pertains only to companies owned or partially owned by the People's Republic of China or the People's Liberation Army of the People's Republic of China. Therefore, an initial regulatory flexibility analysis has not been performed. 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 should cite DFARS Case 98-D305 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim 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.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This rule implements Section 8120 of the DoD Appropriations Act for fiscal year 1999 (Pub. L. 105-262). Section 8120 provides that no funds appropriated under titles III and IV of the Act may be used to enter into or renew a contract with any company owned or partially owned by the People's Republic of China or the People's Liberation Army of the People's Republic of China. Section 8120 became effective on October 17, 1998. 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 Parts 212, 225, and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212, 225, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 212, 225, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.301 is amended in paragraph (f)(ii) in the second sentence by revising the reference "252.225-7000" to read "252.212-7000", and by adding a new paragraph (f)(v) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(v) Use the provision at 252.225-7017, Prohibition on Award to Companies

Owned by the People's Republic of China, as prescribed in 225.771.

PART 225—FOREIGN ACQUISITION

3. Sections 225.771, 225.771-1, 225.771-2, 225.771-3, and 225.771-4 are added to read as follows:

225.771 Prohibition on acquisition from the People's Republic of China.

225.771-1 Definition.

"People's Republic of China" is defined in the provision at 252.225-7017, Prohibition on Award to Companies Owned by the People's Republic of China.

225.771-2 Legal authority.

This section implements Section 8120 of the DoD Appropriations Act for fiscal year 1999 (Pub. L. 105-262).

225.771-3 Prohibition on contract award.

Do not award or renew a contract with any company owned or partially owned by the People's Republic of China or the People's Liberation Army of the People's Republic of China, if using funds made available by Title III (Procurement) or Title IV (Research, Development, Test and Evaluation) of Pub. L. 105-262.

225.771-4 Solicitation provision.

Use the provision at 252.225-7017, Prohibition on Award to Companies Owned by the People's Republic of China, in solicitations for contracts that will use funds made available by Title III or IV of Pub. L. 105-262.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.225-7017 is added to read as follows:

252.225-7017 Prohibition on Award to Companies Owned by the People's Republic of China.

As prescribed in 225.771-4, use the following provision:

Prohibition on Award To Companies Owned by the People's Republic of China (Feb. 1999)

(a) *Definition.* "People's Republic of China," as used in this provision, means the government of the People's Republic of China, including its political subdivisions, agencies, and instrumentalities.

(b) *Prohibition on award.* Section 8120 of the Department of Defense Appropriations Act for fiscal year 1999 (Pub. L. 105-262) prohibits the award of a contract under this solicitation to any company owned, or partially owned, by the People's Republic of China or the People's Liberation Army of the People's Republic of China.

(c) *Representation.* By submission of an offer, the offeror represents that it is not

owned, or partially owned, by the People's Republic of China or the People's Liberation Army of the People's Republic of China.

(End of provision)

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DEPARTMENT OF DEFENSE

48 CFR Parts 225, 231, and 242

[DFARS Case 95-D040]

Defense Federal Acquisition Regulation Supplement; Independent Research and Development and Bid and Proposal Costs for Fiscal Year 1996 and Beyond

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect changes to the Federal Acquisition Regulation (FAR) that treat independent research and development and bid and proposal costs for fiscal year 1996 and beyond as fully allowable, subject only to the FAR normal standards of reasonableness and allocability.

EFFECTIVE DATE: February 23, 1999.

FOR FURTHER INFORMATION CONTACT:

Ms. Sandra Haberlin, Defense Acquisition Regulations Council, 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 95-D040.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 225.7303-2, 231.205-18, and 242.771 to reflect FAR changes that were published as Item VIII of Federal Acquisition Circular 97-03 (62 FR 64931, December 9, 1997). The FAR changes treat independent research and development and bid and proposal costs for fiscal year 1996 and beyond as fully allowable, subject only to the FAR normal standards of reasonableness and allocability.

A proposed DFARS rule was published on January 3, 1997 (62 FR 374). Two sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final 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 225, 231, and 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225, 231, and 242 are amended as follows:

1. The authority citation for 48 CFR Parts 225, 231, and 242 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

2. Section 225.7303-2 is amended in paragraph (c) introductory text by revising the first sentence to read as follows:

225.7303-2 Cost of doing business with a foreign government or an international organization.

* * * * *

(c) The cost limitations for major contractors on independent research and development and bid and proposal (IR&D/B&P) costs for projects that are of potential interest to DoD, in 231.205-18(c)(iii), do not apply to FMS contracts, except as provided in 225.7303-5. * * *

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PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 231.205-18 is revised to read as follows:

231.205-18 Independent research and development and bid and proposal costs.

(a) *Definitions.* As used in this subsection—

(i) *Covered contract* means a DoD prime contract for an amount exceeding the simplified acquisition threshold, except for a fixed-price contract without cost incentives. The term also includes a subcontract for an amount exceeding the simplified acquisition threshold, except for a fixed-price subcontract

without cost incentives under such a prime contract.

(ii) *Covered segment* means a product division of the contractor that allocated more than \$1,100,000 in independent research and development and bid and proposal (IR&D/B&P) costs to covered contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, the term means that contractor as a whole. A product division of the contractor that allocated less than \$1,100,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year is not subject to the limitations in paragraph (c) of this subsection.

(iii) *Major contractor* means any contractor whose covered segments allocated a total of more than \$11,000,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year. For purposes of calculating the dollar threshold amounts to determine whether a contractor meets the definition of "major contractor," do not include contractor segments allocating less than \$1,100,000 of IR&D/B&P costs to covered contracts during the preceding fiscal year.

(c) *Allowability.*

(i) Departments/agencies shall not supplement this regulation in any way that limits IR&D/B&P cost allowability.

(ii) See 225.7303-2(c) for allowability provisions affecting foreign military sale contracts.

(iii) For major contractors, the following limitations apply:

(A) The amount of IR&D/B&P costs allowable under DoD contracts shall not exceed the lesser of—

(1) Such contracts' allocable share of total incurred IR&D/B&O costs; or
(2) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(B) Allowable IR&D/B&P costs are limited to those for projects that are of potential interest to DoD, including activities intended to accomplish any of the following:

(1) Enable superior performance of future U.S. weapon systems and components.

(2) Reduce acquisition costs and life-cycle costs of military systems.

(3) Strengthen the defense industrial and technology base of the United States.

(4) Enhance the industrial competitiveness of the United States.

(5) Promote the development of technologies identified as critical under 10 U.S.C. 2522.

(6) Increase the development and promotion of efficient and effective applications of dual-use technologies.

(7) Provide efficient and effective technologies for achieving such