

DEPARTMENT OF DEFENSE**48 CFR Part 211**

[DFARS Case 99-D024]

Defense Federal Acquisition Regulation Supplement; OMB Circular A-119**AGENCY:** Department of Defense (DoD).**ACTION:** Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address use of a Federal Acquisition Regulation (FAR) provision that invites offerors to propose alternatives to Government-unique standards. This DFARS rule instructs DoD contracting officers not to use the FAR provision, since DoD uses the Single Process Initiative to encourage offerors to propose alternatives to Government-unique specifications and standards.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3061. Telephone (703) 602-4245; telefax (703) 602-0350. Please cite DFARS Case 99-D024.

SUPPLEMENTARY INFORMATION:**A. Background**

This final DFARS rule supplements the final FAR rule that was published at 64 FR 51834 on September 24, 1999 (Federal Acquisition Circular 97-14, Item V) to implement Office of Management and Budget Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities. The FAR rule added a provision at FAR 52.211-7 to permit offerors to propose voluntary consensus standards as alternatives to Government-unique standards included in a solicitation. In accordance with the prescription at FAR 11.107(b), use of the provision is optional for agencies that use the categorical method of reporting their use of voluntary consensus standards to the National Institute of Standards and Technology. DoD uses the categorical method of reporting. In addition, DoD uses the Single Process Initiative procedures at DFARS 211.273 and 252.211-7005 to encourage offerors to propose industry standards as alternatives to Government-unique specifications and standards. Therefore, this DFARS rule specifies that the

provision at FAR 52.211-7 will not be used in DoD solicitations.

DoD published a proposed rule at 64 FR 61056 on November 9, 1999. One source submitted comments in response to the proposed rule. DoD considered those comment in the development of the final rule.

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 provision at FAR 52.211-7, Alternatives to Government-Unique Standards, is optional, and DoD already has implemented procedures for encouraging offerors to propose alternatives to Government-unique specifications and standards through the Single Process Initiative.

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 211

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 211 is amended as follows:

1. The authority citation for 48 CFR Part 211 continues to read as follows:

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

PART 211—DESCRIBING AGENCY NEEDS

2. Subpart 211.1 is added to read as follows:

Subpart 211.1—Selecting and Developing Requirements Documents

Sec.

211.107 Solicitation provision.

211.107 Solicitation provision.

(b) DoD uses the categorical method of reporting. Do not use the provision at FAR 52.211-7, Alternatives to Government-Unique Standards, in DoD solicitations.

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BILLING CODE 5000-04-M

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:** Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8120 of the DoD Appropriations Act for fiscal year 1999, as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. Section 8120 places restrictions on the award of contracts to companies in which the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0288; telefax (703) 602-0350. Please cite DFARS Case 98-D305.

SUPPLEMENTARY INFORMATION:**A. Background**

This rule finalizes the interim rule that was published at 64 FR 8727 on February 23, 1999. DoD received no public comments on the interim rule.

The interim rule implemented Section 8120 of the DoD Appropriations Act for fiscal year 1999 (Public Law 105-262). 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. This final rule also incorporates the provisions of Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277). Section 144 of Public Law 105-277 amended Section 8120 of Public Law 105-262 to restrict contract award only if the Secretary of Defense determines that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest in a company. The Secretary of Defense has delegated the authority for such determinations to the Director of Defense Procurement.

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 pertains only to companies in which the Director of Defense Procurement has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

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 212, 225, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 212, 225, and 252, which was published at 64 FR 8727 on February 23, 1999, is adopted as a final rule with the following changes:

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 225—FOREIGN ACQUISITION

2. Sections 225.771-2 through 225.771-4 are revised and section 225.771-5 is added to read as follows:

225.771-2 Legal authority.

This section implements Section 8120 of the DoD Appropriations Act for fiscal year 1999 (Pub. L. 105-262), as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277).

225.771-3 Prohibition on contract award.

If using fiscal year 1999 funds made available by Title III (Procurement) or Title IV (Research, Development, Test and Evaluation) of Pub. L. 105-262, do not award or renew a contract with any

company in which the Director of Defense Procurement has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

225.771-4 Procedures.

(a) Forward any information that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest in a company, through the head of the agency, to the Director, Defense Procurement, ATTN: OUSD (AT&L) DP/FC, 3060 Defense Pentagon, Washington, DC 20301-3060.

(b) Upon verification of the information, the Director of Defense Procurement will ask the General Services Administration to list the company as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

225.771-5 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 fiscal year 1999 funds made available by Title III or IV of Pub. L. 105-262.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225-7017 is revised to read as follows:

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

As prescribed in 225.771-5, use the following provision:

Prohibition on Award to Companies Owned by the People's Republic of China (FEB 2000)

(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), as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277), prohibits the award of a contract under this solicitation to any company in which the Director of Defense Procurement (Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)) has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

(c) *Representation.* By submission of an offer, the offeror represents that the People's

Republic of China or the People's Liberation Army of the People's Republic of China does not own more than 50 percent interest in the offeror.

(End of provision)

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DEPARTMENT OF DEFENSE

48 CFR Part 219 and Appendix I to Chapter 2

[DFARS Case 99-D307]

Defense Federal Acquisition Regulation Supplement; Mentor-Protege Program Improvements

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Acting Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2000. Section 811 amends statutory provisions pertaining to the DoD Pilot Mentor-Protege Program.

DATES: *Effective date:* February 10, 2000.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before April 10, 2000, to be considered in the formation of the final rule.

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

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

Please cite DFARS Case 99-D307 in all correspondence related to this rule. E-mail comments should cite DFARS Case 99-D307 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602-0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises DFARS Subpart 219.71 and Appendix I to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65). Section 811 amends statutory provisions pertaining to the DoD Pilot Mentor-Protege Program. The amendments revise the procedures for reimbursement