

within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule merely clarifies existing policy pertaining to acquisitions made in support of a base closure or realignment. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D007.

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 226

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 226 as follows:

1. The authority citation for 48 CFR part 226 continues to read as follows:

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

PART 226—OTHER SOCIOECONOMIC PROGRAMS

2. Section 226.7103 is amended by revising paragraph (c) to read as follows:

226.7103 Procedure.

* * * * *

(c) If offers can be expected from business concerns in the vicinity—

(1) Consider section 8(a) only if at least one eligible 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small business only if at least one of the expected offers is from a small business located in the vicinity.

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DEPARTMENT OF DEFENSE

48 CFR Part 244

[DFARS Case 2000–D028]

Defense Federal Acquisition Regulation Supplement; Subcontract Commerciality Determinations

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the responsibilities of contractors and administrative contracting officers regarding determinations as to whether a subcontract item meets the definition of “commercial item” specified in the Federal Acquisition Regulation (FAR).

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 13, 2001, to be considered in the information of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2000–D028 in the subject line of 3-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulation Council, Attn: Mr. Rick Layser, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2000–D028.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to the DFARS to specify that—

(1) The contractor will determine whether a particular subcontract item meets the definition of “commercial item”; and

(2) When conducting a contractor purchasing system review, the administrative contracting officer will review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of “commercial item” in FAR 2.101.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed 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 merely clarifies responsibilities regarding commercial item determinations for subcontracts. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D028.

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 244

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 244 as follows:

1. The authority citation for 48 CFR part 244 continues to read as follows:

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

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

2. Section 244.303 is added to read as follows:

244.303 Extent of review.

Also review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of “commercial item” in FAR 2.101.

3. Section 244.402 is added to read as follows:

244.402 Policy requirements.

(a) Contractors must determine whether a particular subcontract item meets the definition of a commercial item (but see FAR 15.403–1(c)(3)). Contractors are expected to exercise reasonable business judgment in making such determinations, consistent with the guidelines for conducting market research in FAR part 10.

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