

209.106 Preaward surveys.

When requesting a preaward survey, follow the procedures at PGI 209.106.

209.106-1 and 209.106-2 [Removed]

4. Sections 209.106-1 and 209.106-2 are removed.

5. Section 209.202 is revised to read as follows:

209.202 Policy.

(a)(1) When establishing qualification requirements, obtain approval in accordance with PGI 209.202(a)(1).

Subpart 209.3—[Removed]

6. Subpart 209.3 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.209-7000 [Removed and Reserved]**

7. Section 252.209-7000 is removed and reserved.

[FR Doc. 04-3702 Filed 2-20-04; 8:45 am]

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DEPARTMENT OF DEFENSE**48 CFR Part 212**

[DFARS Case 2003-D018]

Defense Federal Acquisition Regulation Supplement; Laws Inapplicable to Commercial Subcontracts

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 remove the Trade Agreements Act and the Buy American Act from the list of laws inapplicable to subcontracts for commercial items. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 23, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@osd.mil. Please cite DFARS Case 2003-D018 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above

methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2003-D018.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dp/dars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes amend DFARS 212.504 to remove the Trade Agreements Act (19 U.S.C. 2512) and the Buy American Act (41 U.S.C. 10) from the list of laws inapplicable to subcontracts for the acquisition of commercial items. Inclusion of these laws on the list is unnecessary, because the Government does not apply the restrictions of the Buy American Act or the Trade Agreements Act at the subcontract level. The prime contractor is responsible for providing an end product that meets the requirements of the Acts. The Trade Agreements Act imposes no requirements as to the origin of components. Although the Buy American Act requires that the cost of domestic components exceed 50 percent of the cost of all components, the subcontracts for the components themselves need not comply with the Buy American Act. The domestic components need only to have been manufactured in the United States, without themselves satisfying a component test.

In some cases, inclusion of the Buy American Act on the list of laws inapplicable to subcontracts for

commercial items has been misinterpreted to mean that commercial components do not count in the calculation of whether domestic components exceed 50 percent of the value of the components of an end item. This is an erroneous interpretation, because the prime contractor must still comply with the Buy American Act when using commercial components. In addition, inclusion of the Buy American Act and the Trade Agreements Act on the list has been misinterpreted to mean that the prime contractor need not comply with the Acts for subcontracted end items. This is also erroneous because, in accordance with FAR 12.501, waiver of the Buy American Act or the Trade Agreements Act is not applicable if the prime contractor is reselling or distributing commercial items of another contractor without adding value.

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 does not expect this rule 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 is a clarification of the Government's existing policy of not applying the Buy American Act or the Trade Agreements Act at the subcontract level. 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 2003-D018.

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 212

Government procurement.

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

Therefore, DoD proposes to amend 48 CFR Part 212 as follows:

1. The authority citation for 48 CFR Part 212 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.504 [Amended]

2. Section 212.504 is amended by removing paragraphs (a)(xxiii) and (a)(xxiv) and redesignating paragraph (a)(xxv) as paragraph (a)(xxiii).

[FR Doc. 04–3706 Filed 2–20–04; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Part 214

[DFARS Case 2003–D076]

Defense Federal Acquisition Regulation Supplement; Sealed Bidding

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 update text pertaining to sealed bidding. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 23, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@osd.mil. Please cite DFARS Case 2003–D076 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D076.

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

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change

the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dp/dars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes include—

- Deletion of unnecessary text at DFARS 214.201–1, 214.407–3(h), and 214.5.
- Redesignation of DFARS 214.202–5(d) as 214.202–5(c) for consistency with the corresponding FAR text.
- Addition of the Defense Contract Management Agency General Counsel to the list of agency officials authorized to permit correction of mistakes in bid before award.

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 does not expect this rule 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 DFARS changes are limited to deletion of unnecessary text and administrative updates. 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 2003–D076.

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 214

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 214 as follows:

1. The authority citation for 48 CFR Part 214 continues to read as follows:

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

PART 214—SEALED BIDDING

214.201–1 [Removed]

2. Section 214.201–1 is removed.

214.202–5 [Amended]

3. Section 214.202–5 is amended by redesignating paragraph (d) as paragraph (c).

4. Section 214.407–3 is amended as follows:

- a. By adding paragraph (e)(ix); and
- b. By removing paragraph (h). The added text reads as follows:

214.407–3 Other mistakes disclosed before award.

(e) * * *

(ix) Defense Contract Management Agency: General Counsel, DCMA.

Subpart 214.5—[Removed]

5. Subpart 214.5 is removed.

[FR Doc. 04–3697 Filed 2–20–04; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Part 224

[DFARS Case 2003–D038]

Defense Federal Acquisition Regulation Supplement; Protection of Privacy and Freedom of Information

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 delete text pertaining to the applicability of the Freedom of Information Act. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 23, 2004, to be considered in the formation of the final rule.