

contracts. Section 847 became effective upon enactment on November 24, 2003, and expires on September 30, 2008. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 212

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 212 is amended 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

■ 2. Section 212.212 is added to read as follows:

212.212 Computer software.

The DoD policy for acquiring commercial computer software is at 227.7202.

■ 3. Subpart 212.70 is added to read as follows:

Subpart 212.70—Pilot Program for Transition to Follow-On Contracting After Use of Other Transaction Authority

Sec.

212.7000 Scope.

212.7001 Definitions.

212.7002 Pilot program.

212.7002-1 Contracts under the program.

212.7002-2 Subcontracts under the program.

212.7003 Rights in technical data and computer software.

212.7000 Scope.

This subpart establishes the pilot program authorized by Section 847 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136).

212.7001 Definitions.

As used in this subpart—

Nontraditional defense contractor means a business unit that—

(1) Has entered into an other transaction agreement with DoD; and
(2) Has not, for a period of at least 1 year prior to the date of the other transaction agreement, entered into or performed on—

(i) Any contract that is subject to full coverage under the cost accounting standards described in FAR Part 30; or
(ii) Any other contract exceeding \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency that is subject to the FAR.

Other transaction means a transaction that—

(1) Is other than a contract, grant, or cooperative agreement;
(2) Is not subject to the FAR or its supplements; and
(3) Is entered into in accordance with 32 CFR part 3.

212.7002 Pilot program.

212.7002-1 Contracts under the program.

(a) The contracting officer may use FAR part 12 procedures to award a contract for an item or process that does not meet the definition of “commercial item,” if the contract—

(1) Is awarded to a nontraditional defense contractor;
(2) Is a follow-on contract for the production of an item or process begun as a prototype project under an other transaction agreement;
(3) Does not exceed \$50,000,000;
(4) Is awarded on or before September 30, 2008; and
(5) Is either—
(i) A firm-fixed-price contract; or
(ii) A fixed-price contract with economic price adjustment.
(b) See 212.7003 for special procedures pertaining to rights in technical data and computer software.

212.7002-2 Subcontracts under the program.

Except as provided in 212.7003, a subcontract for an item or process that does not meet the definition of “commercial item” may be treated as a subcontract for a commercial item, if the subcontract—

(a) Is under a contract awarded in accordance with 212.7002-1;
(b) Is awarded to a nontraditional defense contractor; and
(c) Is either—
(1) A firm-fixed-price subcontract; or
(2) A fixed-price subcontract with economic price adjustment.

212.7003 Rights in technical data and computer software.

For purposes of determining rights in technical data under 227.7102 and rights in computer software under 227.7202, items or processes acquired under a contract or subcontract awarded in accordance with 212.7002 may be treated as developed in part with Federal funds and in part at private expense (*i.e.*, mixed funding). When this occurs—

(a) For technical data, use the clauses at 252.227-7013, Rights in Technical Data—Noncommercial Items, and 252.227-7037, Validation of Restrictive Markings on Technical Data;
(b) For computer software, use the clauses at 252.227-7014, Rights in

Noncommercial Computer Software and Noncommercial Computer Software Documentation, and 252.227-7019, Validation of Asserted Restrictions—Computer Software;

(c) Require the contractor to include the clauses prescribed by paragraphs (a) and (b) of this section in subcontracts awarded in accordance with 212.7002-2; and

(d) Negotiate for the appropriate technical data and computer software deliverables and special license rights in those deliverables, in view of the parties' relative contributions to the development of the items or processes.

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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: Final rule.

SUMMARY: DoD has issued a final rule amending 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 rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Effective November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2003-D018.

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/dpap/dfars/transf.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule amends 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.

DoD published a proposed rule at 69 FR 8151 on February 23, 2004. DoD received one comment in response to the proposed rule, and that comment supported the rule. Therefore, DoD has adopted the proposed rule as a final rule, with the addition of a correction to a cross-reference in 212.504(a).

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 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.

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, 48 CFR part 212 is amended 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 as follows:

- a. By removing paragraphs (a)(xxiii) and (a)(xxiv);
- b. By redesignating paragraph (a)(xxv) as paragraph (a)(xxiii); and
- c. In newly designated paragraph (a)(xxiii), in the second sentence, by removing “225.7019–2(b)” and adding in its place “225.7009–2(b)”.

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DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 2003–D036]

Defense Federal Acquisition Regulation Supplement; Cost Principles and Procedures

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contract cost principles. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Effective November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2003–D036.

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/dpap/dfars/transf.htm>.

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

- Delete the text at DFARS 231.205–10, Cost of money, because it is redundant of the text in DFARS Subpart 230.70, Facilities Capital Employed for Facilities in Use.
- Clarify the text at DFARS 231.205–22, Legislative lobbying costs, to specify that these costs are statutorily unallowable.
- Revise the text at DFARS 231.205–70, External restructuring costs, to—

1. Eliminate unnecessary references to fiscal years 1995, 1997, and 1998 legislation.

2. Delete text at 231.205–70(c)(1)(iv)(A) and (B) regarding business combinations that occurred on or before November 18, 1997. This text is unnecessary, because external restructurings normally must be initiated within 3 years of a business combination.

3. Delete text at 231.205–70(d), Procedures and ACO responsibilities. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A final rule addressing the purpose and structure of PGI is published elsewhere in this issue of the **Federal Register** under DFARS Case 2003–D090, Procedures, Guidance, and Information. PGI is available at <http://www.acq.osd.mil/dpap/dars/index.htm>.

DoD published a proposed rule at 69 FR 8154 on February 23, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 clarifies existing DFARS text, and deletes DFARS text that is redundant, outdated, or procedural, but makes no significant change to contracting policy.

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