

Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Report & Order in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Hawaii, is amended by removing DTV channel *39c and adding DTV channel *10c at Honolulu.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

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DEPARTMENT OF DEFENSE

48 CFR Parts 203, 209, and 252

[DFARS Case 2003-D012]

Defense Federal Acquisition Regulation Supplement; Improper Business Practices and Contractor Qualifications Relating to Debarment, Suspension, and Business Ethics

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to streamline and clarify text pertaining to debarment, suspension, and improper business practices. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: December 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0296; facsimile (703) 602-0350. Please cite DFARS Case 2003-D012.

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 include—

- Consolidation of requirements for reporting violations and suspected violations of certain requirements into a new section at DFARS 203.070. This results in elimination of DFARS sections 203.103, 203.103-2, and 203.104-10; subparts 203.2, 203.3, and 203.4; and sections 203.502 and 203.570-4.

- Streamlining of text at DFARS 203.570-1 and 203.570-2 relating to prohibitions on persons convicted of fraud or other defense-contract-related felonies.

- Revision of the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, to remove unnecessary references to first-tier subcontracts in paragraphs (b) and (d). Paragraph (g) of the clause adequately addresses requirements for flow down to first-tier subcontracts.

- Deletion of text at DFARS 203.570-3 relating to internal DoD procedures for waiver of the 5-year period for prohibitions on persons convicted of fraud or other defense-contract-related felonies; and deletion of text at DFARS 209.105-2, 209.406-3, and 209.407-3 containing internal DoD procedures for referral of matters to agency debarment and suspension officials. This text has been relocated to the new DFARS companion resource, Procedures,

Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 69 FR 8146 on February 23, 2004. Two sources submitted comments on the proposed rule. A discussion of the comments is provided below:

1. *Comment:* Section 203.070, which specifies the violations or suspected violations that must be reported, should also include: the Truth in Negotiations Act (19 U.S.C. 2306(f)); the False Claims Act (31 U.S.C. 3729 *et seq.*); a reference to FAR 9.406-2(a)(3), which lists causes for debarment; and a reference to FAR 9.407-2(a)(3), which lists causes for suspension.

DoD Response: Do not agree. Since section 203.070 falls within the scope of FAR Part 3 and DFARS Part 203, Improper Business Practices and Personal Conflicts of Interest, the violations listed in section 203.070 are limited to those addressed in FAR Part 3 and DFARS Part 203.

2. *Comment:* In section 203.070, the reference to "DoDD 7075.5" should be corrected to read "DoDD 7050.5."

DoD Response: Agree. This correction has been included in the final rule.

3. *Comment:* In section 203.070(c), the reference to the gratuities clause should be corrected to read "FAR 3.203."

DoD Response: Agree. This correction has been included in 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 rule streamlines and clarifies existing DFARS text, with no substantive change in 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 of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 203, 209, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 203, 209, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 203, 209, and 252 continues to read as follows:

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

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Section 203.070 is added to read as follows:

§ 203.070 Reporting of violations and suspected violations.

Report violations and suspected violations of the following requirements in accordance with 209.406–3 or 209.407–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities:

- (a) Certificate of Independent Price Determination (FAR 3.103).
- (b) Procurement integrity (FAR 3.104).
- (c) Gratuities clause (FAR 3.203).
- (d) Antitrust laws (FAR 3.303).
- (e) Covenant Against Contingent Fees (FAR 3.405).
- (f) Anti-kickback Act (FAR 3.502).
- (g) Prohibitions on persons convicted of defense-related contract felonies (203.570).

§ 203.103, 203.103–2, and 203.104–10 [Removed]

■ 3. Sections 203.103, 203.103–2, and 203.104–10 are removed.

Subparts 203.2 through 203.4 [Removed]

■ 4. Subparts 203.2 through 203.4 are removed.

§ 203.502 [Removed]

- 5. Section 203.502 is removed.
- 6. Section 203.502–2 is amended by revising the heading to read as follows:

§ 203.502–2 Subcontractor kickbacks.

* * * * *

■ 7. Sections 203.570–1 and 203.570–2 are revised to read as follows:

§ 203.570–1 Scope.

This subpart implements 10 U.S.C. 2408.

§ 203.570–2 Prohibition period.

DoD has sole responsibility for determining the period of the prohibition described in paragraph (b) of the clause at 252.203–7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies. The prohibition period—

(a) Shall not be less than 5 years from the date of conviction unless the agency

head or a designee grants a waiver in the interest of national security. Follow the waiver procedures at PGI 203.570–2(a); and

(b) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency shall provide a copy of the determination to the address at PGI 203.570–2(b).

§ 203.570–3 and 203.570–4 [Removed]

■ 8. Sections 203.570–3 and 203.570–4 are removed.

§ 203.570–5 [Redesignated as 203.570–3]

■ 9. Section 203.570–5 is redesignated as section 203.570–3.

PART 209—CONTRACTOR QUALIFICATIONS

■ 10. Section 209.105–2 is revised to read as follows:

§ 209.105–2 Determinations and documentation.

(a) For guidance on submission of determinations to the appropriate debarring and suspending official, see PGI 209.105–2(a).

■ 11. Section 209.406–3 is revised to read as follows:

§ 209.406–3 Procedures.

Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official. Follow the procedures at PGI 209.406–3.

■ 12. Section 209.407–3 is revised to read as follows:

§ 209.407–3 Procedures.

Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official. Follow the procedures at PGI 209.407–3.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. Section 252.203–7001 is amended by revising the introductory text, clause date, paragraph (b), paragraph (d) introductory text, and paragraph (h) to read as follows:

§ 252.203–7001 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

As prescribed in 203.570–3, use the following clause:

Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Dec 2004)

* * * * *

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving—

- (1) In a management or supervisory capacity on this contract;
- (2) On the board of directors of the Contractor;
- (3) As a consultant, agent, or representative for the Contractor; or
- (4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.

* * * * *

(d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—

* * * * *

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (301) 809–4904.

(End of clause)

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DEPARTMENT OF DEFENSE

48 CFR Part 206

[DFARS Case 2003–D017]

Defense Federal Acquisition Regulation Supplement; Competition Requirements

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 competition requirements. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: December 15, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326;