

- Amends DFARS 228.105 to clarify that fidelity and forgery bonds are authorized for use under certain circumstances; and

- Amends DFARS 228.106–7(a) to update a cross-reference.

DoD published a proposed rule at 69 FR 48444 on August 10, 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 updates and clarifies 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 Part 228

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 228 is amended as follows:

PART 228—BONDS AND INSURANCE

■ 1. The authority citation for 48 CFR part 228 continues to read as follows:

■ 2. Section 228.105 is revised to read as follows:

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

228.105 Other types of bonds.

Fidelity and forgery bonds generally are not required but are authorized for use when—

(1) Necessary for the protection of the Government or the contractor; or

(2) The investigative and claims services of a surety company are desired.

228.106–7 [Amended]

■ 3. Section 228.106–7 is amended in paragraph (a) by revising the

parenthetical to read “(see FAR 32.112–1(b))”.

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DEPARTMENT OF DEFENSE

48 CFR Part 229

[DFARS Case 2003–D032]

Defense Federal Acquisition Regulation Supplement; Resolving Tax Problems

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 resolution of tax problems under DoD contracts. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: February 22, 2005.

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–D032.

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 revises DFARS 229.101 to remove text pertaining to (1) resolution of issues regarding the applicability of taxes under DoD contracts; and (2) tax relief agreements between the United States and European governments. 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 48445 on August 10, 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 relocates DoD procedural information related to tax relief, 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 Part 229

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 229 is amended as follows:

PART 229—TAXES

■ 1. The authority citation for 48 CFR part 229 continues to read as follows:

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

■ 2. Subpart 229.1 is revised to read as follows:

Subpart 229.1—General

Sec.
229.101 Resolving tax problems.

229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General.

(c) For guidance on directing a contractor to litigate the applicability of a particular tax, see PGI 229.101(c).

(d) For information on tax relief agreements between the United States

and European foreign governments, see PGI 229.101(d).

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DEPARTMENT OF DEFENSE

48 CFR Part 246

[DFARS Case 2002-D032]

Defense Federal Acquisition Regulation Supplement; Government Source Inspection 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 eliminate requirements for Government contract quality assurance at source for contracts or delivery orders valued below \$250,000, unless certain conditions exist.

DATES: *Effective Date:* February 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350. Please cite DFARS Case 2002-D032.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule adds policy at DFARS 246.402 and 246.404 to eliminate the requirement for Government contract quality assurance at source for contracts or delivery orders valued below \$250,000, unless (1) mandated by DoD regulation, (2) required by a memorandum of agreement between the acquiring department or agency and the contract administration agency, or (3) the contracting officer determines that certain conditions exist.

DoD published a proposed rule at 68 FR 53946 on September 15, 2003. Thirty-seven respondents submitted comments on the proposed rule. Nine of the respondents were in favor of the rule, noting that the change will result in savings, will expedite deliveries, and is especially appropriate for commercial items. A discussion of comments submitted by the other respondents is provided below:

1. *Comment:* It is unclear as to why the criteria of both 242.402(3)(i) and (ii) must be met. If the Government specifies important technical requirements (through technical documents, specifications, drawings,

etc.), there is adequate justification for Government quality assurance at source. Paragraphs (3)(i) and (ii) should be required to read "(i) Contract technical requirements are significant (e.g., the technical requirements include drawings, test procedures, characteristics that are critical to proper performance of the item are identified, specific concerns have been identified with regard to the contractor's ability to meet technical requirements, etc)".

DoD Response: Do not agree with the proposed revision. However, 246.402(3)(ii) has been revised in the final rule for clarity.

2. *Comment:* Section 246.402(3)(iii), addressing manufacturers/producers and non-manufacturers/non-producers, should be eliminated.

DoD Response: Do not agree. The delivery of supplies through a non-manufacturer or non-producer affects the ability to perform meaningful quality assurance at sources. The rule is intended to ensure that contracting officers address this issue.

3. *Comment:* Section 246.402(3)(iii) should be clarified to explain its meaning and how it will be defined to apply equally.

DoD Response: Do not agree. The terms in paragraph (3)(iii), relating to manufacturers and producers, are sufficiently clear and do not require definition.

4. *Comment:* One respondent posed a question regarding 246.402(3)(ii) and asked about the interpretation of critical product features/characteristics and specific acquisition concerns at the contract administration office level.

DoD Response: The final rule revises 246.402(3) to further clarify the requirement for the contracting officer to ensure that critical product features and characteristics are identified, either through contract technical requirements or through other communications with the provider of the Government contract quality assurance at source, and to identify specific concerns. The contract administration office should assist in this identification as appropriate, but is not expected to provide the information absent the contracting officer activities.

5. *Comment:* To minimize confusion that will ensue regarding determinations for the need for source inspection, the phrase "critical product feature" should be clarified.

DoD Response: The final rule revises 246.402(3)(ii) for further clarification.

6. *Comment:* The following subparagraphs should be added to 246.402 as exceptions to the proposed rule: (3)(iv)—"The contract will require shipment of material OCONUS"; and (4)—"Contract is in support of a

Security Assistance or Foreign Military Sales case." The comment details additional costs and export licenses associated with free on board (f.o.b.) destination conditions for OCONUS shipments and agreed-to letters of offer and acceptance between the U.S. Government and foreign governments.

DoD Response: Do not agree with the recommended change. If the conditions for Government contract quality assurance at source are met, the additional requirements may be communicated by defining them as a specific acquisition concern.

7. *Comment:* Section 246.402(3) should be revised to provide flexibility with regard to the first two criteria and to add a fourth criterion to allow for other circumstances determined by the contracting officer after consultation with quality assurance personnel.

DoD Response: Do not agree. Neither an additional criterion nor changes to the existing criteria are needed. However, 246.402(3)(ii) has been revised for further clarity.

8. *Comment:* The text at 246.402 provides differing criteria for Government contract quality assurance at source than that found at FAR 46.404.

DoD Response: Do not agree. FAR 46.404 directs the user to FAR 46.402, which is supplemented by this DFARS change.

9. *Comment:* DFARS 246.405 should be reinstated to ensure that subcontract activities parallel the proposed change.

DoD Response: Do not agree. The provisions of FAR 46.405 adequately address required Government quality assurance activity at the subcontract level.

10. *Comment:* FAR 52.213-4(d) and FAR 52.246-2 should not be used concurrently in the same contract.

DoD Response: The comment is outside the scope of this case. However, it is noted that FAR 46.302 specifically allows for inclusion of the clause at FAR 52.246-2 in contracts below the simplified acquisition threshold when it is in the Government's best interest.

11. *Comment:* The threshold of \$250,000 could be twice that amount.

DoD Response: DoD considers a threshold of \$250,000 to be appropriate at this time.

12. *Comment:* The dollar threshold should be eliminated on the basis that it is irrelevant and appears arbitrary in nature. Technical description, complexity, and criticality are the FAR 46.203 criteria for establishment of contract quality requirements.

DoD Response: DoD recognizes that cost is not the indicator of requirements for Government contract quality assurance at source. Therefore, the