

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
IN	Indianapolis (City Marion County (FEMA Docket No. P7663).	Berkshire Creek	At its confluence with Devon Creek Approximately 150 feet upstream of Marrison Place..	*746 *780
		Buffalo Creek	Just upstream of West County Line Road	*707
		Devon Creek	At East Stop 11 Road Approximately 740 feet downstream of Millersville Road.	*754 *733
		Approximately 100 feet upstream of Laurel Falls Road.	*814
		Little Buck Creek	Approximately 300 feet downstream of South Tibbs Avenue. Approximately 75 feet upstream of the furthest upstream crossing of East Edgewood Avenue.	*669 *844
Maps are available for inspection at 2142 City-County Building, 200 East Washington Street, Indianapolis, Indiana.				
NE	Wakefield (City Dixon and Wayne Counties (FEMA Docket No. P7663).	Logan Creek Dredge	Approximately 1.4 miles downstream of State Highway 35. Approximately 0.6 miles upstream of County Road 859.	◆1,378 ◆1,389
		South Logan Creek	At confluence with Logan Creek Dredge Approximately 1.2 miles upstream of the confluence with Logan Creek Dredge.	◆1,387 ◆1,390
		Ponding areas west of State Highway 35 and north of Abandoned Railroad (4).	Entire shoreline	◆1,382
		Ponding areas adjacent to State Highway 35 and north of Abandoned Railroad (4).	Entire shoreline	◆1,380
		Ponding area east of State Highway 35.	Entire shoreline	◆1,376
		Ponding area east of State Highway 35 and south of Abandoned Railroad.	Entire shoreline	◆1,378
Maps are available for inspection at 405 Main Street, Wakefield, Nebraska.				
WI	Manitowoc (City Manitowoc County (FEMA Docket No. P7663).	Manitowoc River	At South 10th Street Approximately 2,550 feet downstream of Michigan Avenue.	*585 *604
Maps are available for inspection at Manitowoc City Hall, 900 Quay Street Manitowoc, Wisconsin.				

(Catalog of Federal Domestic Assistance No. 83.100, "Floor Insurance.")

Dated: May 16, 2005.

David I. Maurstad,

*Acting Director, Mitigation Division,
Emergency Preparedness and Response
Directorate.*

[FR Doc. 05-10303 Filed 5-23-05; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 207, 208, 216, 217, and 237

[DFARS Case 2002-D024]

Defense Federal Acquisition Regulation Supplement; Approval of Service Contracts and Task and Delivery Orders

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 and Section 854 of the National Defense Authorization Act for Fiscal Year 2005. Section 801(b) requires DoD to establish and implement a management structure for the procurement of services. Section 854 requires DoD agencies to comply with certain review and approval requirements before using a non-DoD contract to procure supplies or services in amounts exceeding the simplified acquisition threshold.

DATES: *Effective date:* May 24, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before July

25, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2002-D024, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2002-D024 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602-0326.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 56563 on October 1, 2003, to implement Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107). The rule established requirements for DoD to obtain certain approvals before acquiring services through use of a DoD contract or task order that is not performance based, or through any contract or task order that is awarded by an agency other than DoD.

Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) placed additional restrictions on the use of contracts awarded by an agency other than DoD. Section 854 provides that a DoD agency may not procure goods or services through a contract entered into by a non-DoD agency for an amount exceeding the simplified acquisition threshold, unless the procurement is accomplished in accordance with review and approval procedures prescribed by the agency head.

Seventeen sources submitted comments on the interim rule published on October 1, 2003. This second interim rule contains changes resulting from public comments; changes implementing Section 854 of Public Law 108-375; and changes implementing the requirements of a DoD policy memorandum dated October 29, 2004, on the proper use of non-DoD contracts for the acquisition of supplies and services. A discussion of the comments received on the interim rule published on October 1, 2003, is provided below:

1. *Comment:* Several respondents requested clarification of the rule's applicability. Some were concerned that rule restricts the ability of DoD agencies to use the General Services Administration (GSA) Federal Supply Schedule program as well as other multi-agency contract programs, and that the rule will cause delays in acquiring necessary products and services. Some respondents requested revision of the rule to exclude orders placed by DoD agencies under these programs. One respondent recommended establishment of a blanket approval for certain non-DoD acquisition providers. Some respondents were concerned that the language specifying a "Prohibition" on

the acquisition of services was overly restrictive.

DoD Response: The rule is not intended to prohibit DoD use of non-DoD contracts. DoD recognizes that, in many cases, use of non-DoD contracts is an effective way to accomplish acquisitions in support of DoD's mission. The intent of the rule is to require appropriate review and oversight of DoD acquisitions under non-DoD contracts to ensure that such acquisitions are in the best interest of DoD and comply with all applicable statutory and regulatory requirements. The rule has been revised to further clarify its applicability and review requirements. In addition, the text formerly at 237.170-2, Prohibition on acquisition of services, has been removed, as it was considered to be unnecessary and subject to misinterpretation.

2. *Comment:* Two respondents requested establishment of a minimum dollar threshold for application of the rule. One respondent believed it is in DoD's best interest to establish a contract value threshold of greater than \$3 million. The respondent stated that the benefits are not believed to outweigh the costs of imposing performance-based requirements on all contracts and task orders. Another respondent suggested using the simplified acquisition threshold as a minimum dollar threshold for actions that require approvals if purchased outside of DoD and if the statement of work is not performance based.

DoD Response: The rule has been revised to specify the simplified acquisition threshold as the threshold above which review and approval is required for orders issued under non-DoD contracts, as required by Section 854 of Public Law 108-375. The thresholds for review and approval of service contracts that are not performance based, which were specified in the interim rule published on October 1, 2003, are still considered to be appropriate and are included in this second interim rule. The rule provides sufficient flexibility for DoD departments and agencies to establish review programs commensurate with management structures.

3. *Comment:* One respondent stated that additional approvals should not be required of a DoD agency when it is awarding performance-based task orders against Federal Supply Schedules and Governmentwide acquisition contracts; and that approval requirements should be the same when DoD awards a contract or task order for services that is not performance-based, whether placed against a DoD contract, a Federal Supply

Schedule, or a Governmentwide acquisition contract. Another respondent asked whether approval must be obtained for a task order issued against other agency's contract when the statement of work is already contained within the contract and may not be performance based.

DoD Response: Approval in accordance with agency procedures, established within the requirements of the DFARS rule, is needed for any acquisition of services that is not performance based and for acquisitions under non-DoD contracts. Both approval requirements must be met.

4. *Comment:* One respondent recommended an exemption for healthcare personal services contracts awarded under the authority of 10 U.S.C. 1091 and DFARS 237.104, because use of performance-based contracting may not always be practical for these services.

DoD Response: Section 801(b) does not exempt any categories of services from its requirements. Although there may be certain categories of services that may not always be appropriate for performance-based contracting, DoD does not want to preclude the possibility of using such an approach in those situations where it is deemed appropriate.

5. *Comment:* Several respondents requested that the Economy Act be addressed. One respondent recommended that the Economy Act procedures be updated to include a requirement for a statement in the determination and findings to verify that the contract work statement is performance based.

DoD Response: Requirements for interagency acquisitions under the Economy Act are addressed in FAR Subpart 17.5 and DFARS Subpart 217.5. No changes to those requirements are needed for implementation of this rule.

6. *Comment:* One respondent requested that the interim rule be withdrawn and reissued as a proposed rule to allow for industry feedback. The respondent stated that the interim rule negatively impacts the DoD procurement process, undermines GSA ordering procedures, and adversely affects GSA vendors and DoD customers.

DoD Response: The first interim rule and this second interim rule implement statutory requirements. Therefore, to meet those statutory requirements, DoD considers immediate implementation to be necessary. However, as with any interim rule, the public is provided an opportunity to comment and DoD must consider all comments.

7. *Comment:* One respondent requested amendment of the rule to address use of the Intra-Governmental Transaction (IGT) portal to track, monitor, and report the types of services acquired by DoD. It was also suggested that DoD establish a Service Acquisition Agency Review Board that would negotiate Service Level Agreements with outside agencies and a Contract Vehicle Review Board that would evaluate outside contract vehicles and provide a list of approved vehicles for use by all DoD branches.

DoD Response: These comments are considered to be outside the scope of this case.

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 contains internal DoD approval requirements, intended to ensure that acquisitions of supplies and services are accomplished in accordance with existing statutes and regulations. 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 2002–D024.

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.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375). Section 854 requires DoD agencies to comply with certain review and approval requirements before using a non-DoD contract to procure supplies or services in amounts exceeding the simplified acquisition threshold. Section 854

became effective on April 26, 2005. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 207, 208, 216, 217, and 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 207, 208, 216, 217, and 237 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 207, 208, 216, 217, and 237 continues to read as follows:

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

PART 207—ACQUISITION PLANNING

■ 2. Section 207.105 is amended by adding paragraph (b)(4) to read as follows:

207.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) *Acquisition considerations.* When supplies or services will be acquired by placing an order under a non-DoD contract (*e.g.*, a Federal Supply Schedule contract), regardless of whether the order is placed by DoD or by another agency on behalf of DoD, address the method of ensuring that the order will be consistent with DoD statutory and regulatory requirements applicable to the acquisition and the requirements for use of DoD appropriated funds.

* * * * *

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 3. Section 208.404 is amended by redesignating paragraph (a) as paragraph (a)(ii) and by adding paragraph (a)(i) to read as follows:

208.404 Using schedules.

(a)(i) Departments and agencies shall comply with the review and approval requirements established in accordance with Subpart 217.78 when placing orders for supplies or services in amounts exceeding the simplified acquisition threshold.

* * * * *

PART 216—TYPES OF CONTRACTS

■ 4. Section 216.505 is amended by designating the existing text as paragraph (2) and by adding paragraph (1) to read as follows:

216.505 General.

(1) Departments and agencies shall comply with the review and approval requirements established in accordance with Subpart 217.78 when placing orders under non-DoD contracts in amounts exceeding the simplified acquisition threshold.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

■ 5. Subpart 217.78 is added to read as follows:

Subpart 217.78—Contracts or Delivery Orders Issued by a Non-DoD Agency

Sec.

217.7800 Scope of subpart.

217.7801 Definitions.

217.7802 Policy.

217.7800 Scope of subpart.

This subpart—

(a) Implements Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375); and

(b) Prescribes policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies.

217.7801 Definitions.

As used in this subpart—

Assisted acquisition means a contract awarded or a task or delivery order placed on behalf of DoD by a non-DoD agency.

Direct acquisition means a task or delivery order placed by a DoD official under a contract awarded by a non-DoD agency.

217.7802 Policy.

Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—

(a) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include—

(1) Satisfying customer requirements;

(2) Schedule;

(3) Cost effectiveness (taking into account discounts and fees); and

(4) Contract administration (including oversight);

(b) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;

(c) Reviewing funding to ensure that it is used in accordance with appropriation limitations;

(d) Providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements; and

(e) Collecting data on the use of assisted acquisition for analysis.

PART 237—SERVICE CONTRACTING

■ 6. Section 237.170-2 is revised to read as follows:

237.170-2 Approval requirements.

(a) *Acquisition of services through a contract or task order that is not performance based.*

(1) For acquisitions at or below \$50,000,000, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding \$50,000,000, obtain the approval of the senior procurement executive.

(b) *Acquisition of services through use of a contract or task order issued by a non-DoD agency.* Comply with the review and approval requirements established in accordance with Subpart 217.78 when acquiring services through use of a contract or task order issued by a non-DoD agency.

237.170-3 [Removed]

■ 7. Section 237.170-3 is removed.

[FR Doc. 05-10225 Filed 5-23-05; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 216

[DFARS Case 2005-D003]

Defense Federal Acquisition Regulation Supplement; Incentive Program for Purchase of Capital Assets Manufactured in the United States

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2004. Section 822 requires the Secretary of Defense to establish an incentive program for contractors to purchase capital assets manufactured in the United States, and

to provide consideration for offerors with eligible capital assets in source selections for major defense acquisition programs.

DATES: *Effective Date:* May 24, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before July 25, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005-D003, using any of the following methods:

◦ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

◦ *Defense Acquisition Regulations Web Site:* <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

◦ *E-mail:* dfars@osd.mil. Include DFARS Case 2005-D003 in the subject line of the message.

◦ *Fax:* (703) 602-0350.

◦ *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

◦ *Hand Delivery/Courier:* Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

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

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 215.304 and 216.470 to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 822 added 10 U.S.C. 2436, which requires the Secretary of Defense to (1) establish an incentive program for contractors to purchase capital assets manufactured in the United States under contracts for major defense acquisition programs; and (2) provide consideration for offerors with eligible capital assets in source selections for major defense acquisition programs.

In addition, 10 U.S.C. 2436 authorizes the Secretary of Defense to use the Defense Industrial Capabilities Fund, established under Section 814 of the National Defense Authorization Act for Fiscal Year 2004, for incentive payments under the program. However, no funds have been appropriated for the Industrial Capabilities Fund.

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 has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The objective of the rule is to increase the use of capital assets manufactured in the United States under DoD contracts for major defense acquisition programs. The rule implements 10 U.S.C. 2436, as added by Section 822 of the National Defense Authorization Act for Fiscal Year 2004. Most prime contractors for major defense acquisition programs are large business concerns. However, the rule is expected to have a positive impact on U.S. small business manufacturers of machine tools and other capital assets used in major defense acquisition programs, as their sales to DoD prime contractors should increase.

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 2005-D003.

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.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 822 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 822 requires DoD to establish an incentive program for contractors to purchase capital assets manufactured in the United States under contracts for major defense acquisition programs. In addition, Section 822 authorizes DoD to prescribe interim regulations as necessary to carry out the requirements of Section 822 and exempts DoD from compliance with the notice and comment requirements of 5 U.S.C. 553 for those regulations. Section 822 applies with respect to contracts entered into on or after May 24, 2005. Comments received in response to this interim rule will be considered in the formation of the final rule.