

7.300 [Reserved]**7.301 Definitions.**

Definitions of “inherently governmental activity” and other terms applicable to this subpart are set forth at Attachment D of the Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (the Circular).

7.302 Policy.

(a) The Circular provides that it is the policy of the Government to—

(1) Perform inherently governmental activities with Government personnel; and

(2) Subject commercial activities to the forces of competition.

(b) As provided in the Circular, agencies shall—

(1) Not use contractors to perform inherently governmental activities;

(2) Conduct public-private competitions in accordance with the provisions of the Circular and, as applicable, these regulations;

(3) Give appropriate consideration relative to cost when making performance decisions between agency and contractor performance in public-private competitions;

(4) Consider the Agency Tender Official an interested party in accordance with 31 U.S.C. 3551 to 3553 for purposes of filing a protest at the Government Accountability Office; and

(5) Hear contests in accordance with OMB Circular A-76, Attachment B, paragraph F.

(c) When using sealed bidding in public-private competitions under OMB Circular A-76, contracting officers shall not hold discussions to correct deficiencies.

7.303 [Reserved]**7.304 [Reserved]****7.305 Solicitation provisions and contract clause.**

(a) The contracting officer shall, when soliciting offers and tenders, insert in solicitations issued for standard competitions the provision at 52.207-1, Notice of Standard Competition.

(b) The contracting officer shall, when soliciting offers, insert in solicitations issued for streamlined competitions the provision at 52.207-2, Notice of Streamlined Competition.

(c) The contracting officer shall insert the clause at 52.207-3, Right of First Refusal of Employment, in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the

Government and in contracts that result from the solicitations, whether or not a public-private competition is conducted. The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

7.500 [Amended]

6. Amend section 7.500 by removing the last sentence.

PART 14—SEALED BIDDING**14.203-2 [Amended]**

7. Amend section 14.203-2 by removing the paragraph designation “(a)” and by removing paragraph (b).

PART 37—SERVICE CONTRACTING

8. Amend section 37.503 by revising paragraph (c) to read as follows:

37.503 Agency-head responsibilities.

* * * * *

(c) Specific procedures are in place before contracting for services to ensure that inherently governmental functions are performed by Government personnel; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Revise the section heading and text of section 52.207-1 to read as follows:

52.207-1 Notice of Standard Competition.

As prescribed in 7.305(a), insert the following provision:

NOTICE OF STANDARD COMPETITION (DATE)

(a) This solicitation is part of a standard competition under Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (hereafter “the Circular”), to determine whether to accomplish the specified work under contract or by Government performance.

(b) The Government will evaluate private sector offers, the agency tender, and public reimbursable tenders, as provided in this solicitation and the Circular.

(c) A performance decision resulting from this standard competition will be publicly announced in accordance with the Circular. If the performance decision favors a private sector offeror, a contract will be awarded. If the performance decision favors an agency or a public reimbursable tender, the Contracting Officer shall establish, respectively, either a Most Efficient Organization letter of obligation or a fee-for-service agreement, as those terms are defined in the Circular.

(d) As provided in the Circular, directly interested parties may file contests, which are governed by the procedures in FAR 33.103. Until resolution of any contest, or the expiration of the time for filing a contest, only legal agents for directly interested parties shall have access to the certified

standard competition form, the agency tender, and public reimbursable tenders. (End of provision)

10. Revise section 52.207-2 to read as follows:

52.207-2 Notice of Streamlined Competition.

As prescribed in 7.305(b), insert the following provision:

NOTICE OF STREAMLINED COMPETITION (DATE)

(a) This solicitation is part of a streamlined competition under Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (hereafter “the Circular”), to determine whether to accomplish the specified work under contract or by Government performance.

(b) The Government will evaluate the cost of private sector and Agency or public reimbursable performance, as provided in this solicitation and the Circular.

(c) A performance decision resulting from this streamlined competition will be publicly announced in accordance with the Circular. If the performance decision favors private sector performance, the Contracting Officer shall either award a contract or issue a competitive solicitation for private sector offers. If the performance decision favors Agency or public reimbursable performance, the Agency shall establish, respectively, either a letter of obligation or a fee-for-service agreement, as those terms are defined in the Circular.

(End of provision)

52.207-3 [Amended]

11. Amend section 52.207-3 by revising the date of the clause to read “(DATE)”; and by removing from paragraphs (a) and (b) of the clause the word “employees” and adding “personnel” in its place.

[FR Doc. 05-14569 Filed 7-25-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE**48 CFR Parts 247 and 252**

[DFARS Case 2003-D028]

Defense Federal Acquisition Regulation Supplement; Transportation

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 on transportation matters relating to DoD contracts. 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 September 26, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D028, 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 2003–D028 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Deborah Tronic, 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. Deborah Tronic, (703) 602–0289.

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

○ Delete text on transportation matters that are sufficiently addressed in the Federal Acquisition Regulation or in DoD transportation regulations;

○ Clarify requirements for inclusion of shipping instructions in solicitations and contracts; and

○ Delete procedures for contracting for the preparation of property for

shipment or storage; and for preparation of consignment instructions. Text on these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at <http://www.acq.osd.mil/dpap/dars/pgi>.

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 deletes unnecessary or procedural text on contract transportation matters, but makes no significant change to DoD contracting policy. 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–D028.

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 247 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 247 and 252 as follows:

1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

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

PART 247—TRANSPORTATION

Subpart 247.1 [Removed]

2. Subpart 247.1 is removed.

3. Section 247.206 is amended by revising paragraph (1) to read as follows:

247.206 Preparation of solicitations and contracts.

(1) Consistent with FAR 15.304 and 215.304, consider using the following as evaluation factors or subfactors:

(i) Record of claims involving loss or damage; and

(ii) Commitment of transportation assets to readiness support (*e.g.*, Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement).

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247.270–1 [Removed]

4. Section 247.270–1 is removed.

247.270–2 [Redesignated]

5. Section 247.270–2 is redesignated as section 247.270–1.

247.270–3 [Removed]

6. Section 247.270–3 is removed.

247.270–4 [Redesignated]

7. Section 247.270–4 is redesignated as section 247.270–2.

247.270–5 [Removed]

8. Section 247.270–5 is removed.

247.270–6 [Redesignated]

9. Section 247.270–6 is redesignated as section 247.270–3.

247.271–1 and 247.271–2 [Removed]

10. Sections 247.271–1 and 247.271–2 are removed.

247.271–3 and 247.271–4 [Redesignated]

11. Sections 247.271–3 and 247.271–4 are redesignated as sections 247.271–1 and 247.271–2, respectively.

12. Newly designated section 247.271–1 is revised to read as follows:

247.271–1 Procedures.

Follow the procedures at PGI 247.271–1 for contracting for the preparation of personal property for shipment or storage.

13. Newly designated section 247.271–2 is amended by revising paragraph (c) to read as follows:

247.271–2 Solicitation provisions, schedule formats, and contract clauses.

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(c) In solicitations and resulting contracts, the schedules provided by the installation personal property shipping office. Follow the procedures at PGI 247.271–2 for use of schedules.

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14. Sections 247.305–10 and 247.305–70 are revised to read as follows:

247.305–10 Packing, marking, and consignment instructions.

Follow the procedures at PGI 247.305–10 for preparation of consignment instructions.

247.305-70 Returnable containers other than cylinders.

Use the clause at 252.247-7021, Returnable Containers Other Than Cylinders, in solicitations and contracts for supplies involving contractor-furnished returnable reels, spools, or other returnable containers if the contractor is to retain title to the containers.

247.370 [Removed]

15. Section 247.370 is removed.

247.371 and 247.372 [Redesignated]

16. Sections 247.371 and 247.372 are redesignated as sections 247.370 and 247.371, respectively.

17. Newly designated sections 247.370 and 247.371 are revised to read as follows:

247.370 DD Form 1384, Transportation Control and Movement Document.

The transportation office of the shipping activity prepares the DD Form 1384 to accompany all shipments made through a military air or water port, in accordance with DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 203.

247.371 DD Form 1653, Transportation Data for Solicitations.

The transportation specialist prepares the DD Form 1653 to accompany requirements for the acquisition of supplies. The completed form should contain recommendations for suitable f.o.b. terms and other suggested transportation provisions for inclusion in the solicitation.

247.373 [Redesignated]

18. Section 247.373 is redesignated as section 247.372.

19. Section 247.572-1 is amended by revising paragraph (b) to read as follows:

247.572-1 Ocean transportation incidental to a contract for supplies, services, or construction.

* * * * *

(b) DD Form 1653, Transportation Data for Solicitations, shall be used—

(1) By the requesting activity in developing the Government estimate for transportation costs; and

(2) By the contracting officer in ensuring that valid shipping instructions and delivery terms are included in solicitations and contracts that may involve transportation of supplies by sea.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.247-7000 through 252.247-7002 and 252.247-7004 through 252.247-7007 [Amended]**

20. Sections 252.247-7000 through 252.247-7002 and 252.247-7004 through 252.247-7007 are amended in the introductory text by removing “247.270-6” and adding in its place “247.270-3”.

252.247-7008 [Amended]

21. Section 252.247-7008 is amended in the introductory text and in Alternate I introductory text by removing “247.271-4” and adding in its place “247.271-2”.

252.247-7009 through 252.247-7012 [Amended]

22. Sections 252.247-7009 through 252.247-7012 are amended in the introductory text by removing “247.271-4” and adding in its place “247.271-2”.

252.247-7013 [Amended]

23. Section 252.247-7013 is amended in the introductory text as follows:

- By removing “247.271-4” and adding in its place “247.271-2”; and
- By removing the parenthetical “(see 247.271-2(b))”.

252.247-7014 and 252.247-7016 through 252.247-7020 [Amended]

24. Sections 252.247-7014 and 252.247-7016 through 252.247-7020 are amended in the introductory text by removing “247.271-4” and adding in its place “247.271-2”.

[FR Doc. 05-14626 Filed 7-25-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 050708184-5184-01; I.D. 070105B]

RIN 0648-AT50

Fisheries of the Northeastern United States; Atlantic Bluefish and Summer Flounder Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Fishery Management Plan (FMP) for the Atlantic bluefish fishery and the FMP for the summer flounder, scup, and black sea bass fisheries. This rule would make administrative changes that would allow NMFS to consider and process state commercial quota transfer requests that address late-season circumstances that necessitate a state quota transfer and that occur through December 31 (the end of the fishing year for the bluefish and summer flounder fisheries). The intent of this action is solely to provide the flexibility to address unpredictable late-season events (such as severe weather or port obstruction) that may result in safety concerns in the commercial bluefish and summer flounder fisheries.

DATES: Written comments must be received on or before August 10, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: BF-SFtransfer@noaa.gov.

Include in the subject line the following identifier: “Comments on Bluefish and Summer Flounder State Quota Transfer Amendment.”

- Federal e-Rulemaking portal: <http://www.regulations.gov>.

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Bluefish and Summer Flounder State Quota Transfer Amendment.”

- Fax: (978) 281-9135.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:**Background**

The bluefish and summer flounder fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. Regulations implementing the Atlantic Bluefish FMP appear at 50 CFR part 648, subparts A and J. Regulations implementing the summer flounder portion of the Summer Flounder, Scup, and Black Sea Bass FMP appear at 50 CFR part 648, subparts A and G. The regulations regarding quota transfers and combinations for the bluefish and summer flounder fisheries are found at §§ 648.160 and 648.100, respectively. For each fishery, the FMPs establish state allocations of the commercial