

■ 1. The authority citation for 48 CFR parts 213 and 253 continues to read as follows:

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

### **PART 213—SIMPLIFIED ACQUISITION PROCEDURES**

■ 2. Section 213.302–3 is amended by revising paragraph (2) to read as follows:

#### **213.302–3 Obtaining contractor acceptance and modifying purchase orders.**

\* \* \* \* \*

(2) See PGI 213.302–3 for guidance on the use of unilateral modifications.

\* \* \* \* \*

#### **213.305–1 [Removed]**

■ 3. Section 213.305–1 is removed.

■ 4. Section 213.305–3 is revised to read as follows:

#### **213.305–3 Conditions for use.**

(d)(i) On a very limited basis, installation commanders and commanders of other activities with contracting authority may be granted authority to establish imprest funds and third party draft (accommodation check) accounts. Use of imprest funds and third party drafts must comply with—

(A) DoD 7000.14–R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures; and

(B) The Treasury Financial Manual, Volume I, Part 4, Chapter 3000.

(ii) Use of imprest funds requires approval by the Director for Financial Commerce, Office of the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), except as provided in paragraph (d)(iii) of this subsection.

(iii) Imprest funds are authorized for use without further approval for—

(A) Overseas transactions at or below the micro-purchase threshold in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8); and

(B) Classified transactions.

#### **213.306 [Amended]**

■ 5. Section 213.306 is amended in paragraph (a)(1)(B) by removing “10 U.S.C. 2302(7)” and adding in its place “10 U.S.C. 2302(8)”.

■ 6. Section 213.307 is revised to read as follows:

#### **213.307 Forms.**

See PGI 213.307 for procedures on use of forms for purchases made using simplified acquisition procedures.

#### **213.7001 [Removed]**

■ 7. Section 213.7001 is removed.

#### **213.7002 and 213.7003 [Redesignated]**

■ 8. Sections 213.7002 and 213.7003 are redesignated as sections 213.7001 and 213.7002, respectively.

■ 9. Newly designated section 213.7002 is revised to read as follows:

#### **213.7002 Purchase orders.**

The contracting officer need not obtain a contractor's written acceptance of a purchase order or modification of a purchase order for an acquisition under the 8(a) Program pursuant to 219.804–2(2).

#### **213.7003–1 and 213.7003–2 [Removed]**

■ 10. Sections 213.7003–1 and 213.7003–2 are removed.

### **PART 253—FORMS**

■ 11. Section 253.213 is revised to read as follows:

#### **253.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).**

(f) DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347; and OF 336, Continuation Sheet, instead of OF 348. Follow the procedures at PGI 253.213(f) for use of forms.

■ 12. Section 253.213–70 is revised to read as follows:

#### **253.213–70 Completion of DD Form 1155, Order for Supplies or Services.**

Follow the procedures at PGI 253.213–70 for completion of DD Form 1155.

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## **DEPARTMENT OF DEFENSE**

### **48 CFR Part 215**

[DFARS Case 2003–D077]

#### **Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Contracting by Negotiation**

**AGENCY:** Defense Acquisition Regulations System, 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 contracting by negotiation. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D077.

#### **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/dars/dfars/transformation/index.htm>.

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

- Deletes unnecessary text at DFARS 215.000, 215.204–1, 215.304(c)(ii), and 215.305(b).

- Deletes text at DFARS 215.303 and 215.304 containing procedures for preparation of source selection plans and examples of source selection evaluation factors. 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>.

- Updates references to the clauses at FAR 52.219–8 and 52.219–9, to reflect the current clause titles.

DoD published a proposed rule at 70 FR 14624 on March 23, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule. The final rule contains a paragraph 215.304(c)(ii) that was not included in the proposed rule, as this paragraph was added to the DFARS (as 215.304(c)(iii)) in the interim rule published at 70 FR 29643 on May 24, 2005.

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 streamlines DFARS text, but makes no significant change to DoD 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 of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 215 is amended as follows:

#### PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 215 continues to read as follows:

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

#### 215.000 [Removed]

■ 2. Section 215.000 is removed.

#### Subpart 215.2 [Removed]

■ 3. Subpart 215.2 is removed.

■ 4. Sections 215.303 through 215.305 are revised to read as follows:

#### 215.303 Responsibilities.

(b)(2) For high-dollar value and other acquisitions, as prescribed by agency procedures, the source selection authority shall approve a source selection plan before the solicitation is issued. Follow the procedures at PGI 215.303(b)(2) for preparation of the source selection plan.

#### 215.304 Evaluation factors and significant subfactors.

(c)(i) In acquisitions that require use of the clause at FAR 52.219-9, Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable source selection process (see FAR 15.101-2), the extent of participation of small businesses and historically black colleges or universities and minority institutions in performance of the contract shall be addressed in source selection. The contracting officer shall evaluate the extent to which offerors identify and commit to small business and historically black college or university and minority institution performance of

the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(A) See PGI 215.304(c)(i)(A) for examples of evaluation factors.

(B) Proposals addressing the extent of small business and historically black college or university and minority institution performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and should be structured to allow for consideration of offers from small businesses.

(C) When an evaluation assesses the extent that small businesses and historically black colleges or universities and minority institutions are specifically identified in proposals, the small businesses and historically black colleges or universities and minority institutions considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g).

(ii) In accordance with 10 U.S.C. 2436, consider the purchase and use of capital assets (including machine tools) manufactured in the United States, in source selections for all major defense acquisition programs, as defined in 10 U.S.C. 2430, when it is pertinent to the best value determination.

#### 215.305 Proposal evaluation.

(a)(2) *Past performance evaluation.* When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-9, Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 219 and Appendix I to Chapter 2

[DFARS Case 2004-D028]

#### Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; DoD Pilot Mentor-Protégé Program

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2005. Section 841 extends the length of the DoD Pilot Mentor-Protégé Program for 5 additional years. Section 842 expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protégé firms.

**EFFECTIVE DATE:** January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2004-D028.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 70 FR 29644 on May 24, 2005, to implement Sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Section 841 extends, through September 30, 2010, the period during which companies may enter into agreements under the DoD Pilot Mentor-Protégé Program; and extends, through September 30, 2013, the period during which mentor firms may incur costs that are eligible for reimbursement or credit under the Program. Section 842 expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protégé firms.

One source submitted comments on the interim rule. The respondent supported the rule, but recommended that DoD amend the rule to permit historically black colleges and universities and minority institutions (HBCU/MIs) to participate in the Program as protégé firms. DoD was unable to adopt this recommendation, as there is presently no statutory authority that would permit expanding the Program to include HBCU/MIs. Therefore, DoD has adopted the interim 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.