

Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364).

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207 and 237

RIN 0750-AF87

Defense Federal Acquisition Regulation Supplement; Functions Exempt From Private Sector Performance (DFARS Case 2007-D019)

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 address procedures for preparation of the written determination required by the Federal Acquisition Regulation (FAR), that none of the functions to be performed by contract are inherently governmental.

DATES: *Effective Date:* January 10, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2007-D019.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the DFARS to address procedures for preparation of the written determination required by FAR 7.503(e), that none of the functions to be performed by contract are inherently governmental. The rule requires DoD personnel to prepare the determination using DoD Instruction 1100.22, Guidance for Determining Workforce Mix, and to also include a determination that none of the functions to be performed are exempt from private sector performance, as addressed in DoD Instruction 1100.22.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on

contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2007-D019.

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 207 and 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 207 and 237 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207 and 237 continues to read as follows:

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

PART 207—ACQUISITION PLANNING

■ 2. Section 207.503 is amended by adding paragraph (e) to read as follows:

207.503 Policy.

(e) The written determination required by FAR 7.503(e), that none of the functions to be performed by contract are inherently governmental—

- (i) Shall be prepared using DoD Instruction 1100.22, Guidance for Determining Workforce Mix; and
- (ii) Shall include a determination that none of the functions to be performed are exempt from private sector performance, as addressed in DoD Instruction 1100.22.

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PART 237—SERVICE CONTRACTING

■ 3. Section 237.102 is added to read as follows:

237.102 Policy.

(c) In addition to the prohibition on award of contracts for the performance of inherently governmental functions, contracting officers shall not award contracts for functions that are exempt from private sector performance. See 207.503(e) for the associated documentation requirement.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 217, and 246

RIN 0750-AF86

Defense Federal Acquisition Regulation Supplement; Ship Critical Safety Items (DFARS Case 2007-D016)

AGENCY: Defense Acquisition Regulations System, 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 130 of the National Defense Authorization Act for Fiscal Year 2007. Section 130 requires DoD to establish a quality control policy for the procurement, modification, repair, and overhaul of ship critical safety items.

DATES: *Effective date:* January 10, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 10, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007-D016, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2007-D016 in the subject line of the message.
- *Fax:* 703-602-7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Michael Benavides, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, 703-602-1302.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 130 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 130 requires DoD to prescribe in regulations a quality