

219.7103-1 [Amended]

■ 5. Section 219.7103-1 is amended in the second sentence by removing “SADBU” and adding in its place “SBP”.

219.7103-2 [Amended]

■ 6. Section 219.7103-2 is amended in paragraphs (d)(1), (e)(3), and (f) by removing “SADBU” and adding in its place “SBP”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Section 252.219-7004 is amended by revising the clause date and paragraph (c)(1) to read as follows:

252.219-7004 Small Business Subcontracting Plan (Test Program).

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (AUG 2008)

* * * * *

(c) * * *

(1) One copy of the SF 295 and attachments shall be submitted to Director, Small Business Programs, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), 201 12th Street South, Suite 406, Arlington, VA 22202; and

* * * * *

Appendix I to Chapter 2—Policy and Procedures for the DOD Pilot Mentor-Protege Program

I-102 [Amended]

■ 8. Appendix I to chapter 2 is amended in section I-102 as follows:
 ■ a. In paragraph (a)(1) by removing “Small and Disadvantaged Business Utilization (SADBU)” and adding in its place “Small Business Programs (SBP)”; and
 ■ b. In paragraph (f)(3) by removing “SADBU” and adding in its place “SBP”.

I-103 [Amended]

■ 9. Appendix I to chapter 2 is amended in section I-103, in paragraph (b)(3), by removing “SADBU” and adding in its place “SBP”.

I-105 [Amended]

■ 10. Appendix I to chapter 2 is amended in section I-105 as follows:
 ■ a. In paragraph (a), in the first sentence, by removing “SADBU” and adding in its place “SBP”; and
 ■ b. In paragraph (c) by removing “http://www.acq.osd.mil/sdbu/mentor_protege” and adding in its place “http://www.acq.osd.mil/osbp/mentor_protege/”.

I-107 [Amended]

■ 11. Appendix I to chapter 2 is amended in section I-107, in paragraph (j) in the second sentence, by removing “SADBU” and adding in its place “SBP”.

I-108 [Amended]

■ 12. Appendix I to chapter 2 is amended in section I-108, in paragraphs (c), (e), and (f), by removing “SADBU” and adding in its place “SBP”.

I-109 [Amended]

■ 13. Appendix I to chapter 2 is amended in section I-109, in paragraph (c) in the second sentence, and in paragraph (d) in the first and second sentences, by removing “SADBU” and adding in its place “SBP”.

I-110.2 [Amended]

■ 14. Appendix I to chapter 2 is amended in section I-110.2, in paragraph (a) introductory text, in paragraph (b) introductory text in the second sentence, and in paragraph (c), by removing “SADBU” and adding in its place “SBP”.

I-111 [Amended]

■ 15. Appendix I to chapter 2 is amended in section I-111, in paragraph (a), by removing “SADBU” and adding in its place “SBP”.

I-112.2 [Amended]

■ 16. Appendix I to chapter 2 is amended in section I-112.2 as follows:
 ■ a. In paragraph (d) by removing “http://www.acq.osd.mil/sdbu/mentor_protege” and adding in its place “http://www.acq.osd.mil/osbp/mentor_protege/”; and
 ■ b. In paragraphs (g)(1) and (2) by removing “SADBU” and adding in its place “SBP”.

I-113 [Amended]

■ 17. Appendix I to chapter 2 is amended in section I-113, in paragraph (b), by removing “http://www.acq.osd.mil/sdbu/mentor_protege” and adding in its place “http://www.acq.osd.mil/osbp/mentor_protege/”.

[FR Doc. E8-18508 Filed 8-11-08; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 250, and 252

RIN 0750-AG01

Defense Federal Acquisition Regulation Supplement; Conforming Changes—Standards of Conduct and Extraordinary Contractual Actions (DFARS Case 2008-D004)

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 addressing contractor standards of conduct and the handling of extraordinary contractual actions. The DFARS changes are consistent with changes made to the Federal Acquisition Regulation.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0328; facsimile 703-602-7887. Please cite DFARS Case 2008-D004.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates DFARS text for consistency with changes made to the Federal Acquisition Regulation (FAR) as follows:

- Removes DFARS Subpart 203.70, Contractor Standards of Conduct, and the corresponding contract clause at 252.203-7002, since policy on this subject was added to the FAR at 72 FR 65873 on November 23, 2007.
- Adds DFARS 203.1004 to provide address information for use in completion of the clause at FAR 52.203-14, Display of Hotline Poster(s).
- Revises DFARS Part 250 for consistency with the structure of FAR Part 50, as revised at 72 FR 63027 on November 7, 2007. The DFARS changes update headings, numbering, and cross-references, and reflect the dollar threshold currently specified in the FAR with regard to delegation of authority for approval of extraordinary contractual actions.

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 2008-D004.

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 203, 250, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 203, 250, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 203, 250, and 252 continues to read as follows:

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

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Subpart 203.10 is added to read as follows:

Subpart 203.10—Contractor Code of Business Ethics and Conduct**203.1004 Contract clauses.**

(b)(2)(ii) Insert the following address in paragraph (b)(3) of the clause at FAR 52.203-14, Display of Hotline Poster(s): DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

Subpart 203.70 [Removed]

■ 3. Subpart 203.70 is removed.

■ 4. Part 250 is revised to read as follows:

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT**Subpart 250.1—Extraordinary Contractual Actions**

Sec.
250.100 Definitions.

250.101 General.
250.101-2 Policy.
250.101-2-70 Limitations on payment.
250.101-3 Records.
250.102 Delegation of and limitations on exercise of authority.
250.102-1 Delegation of authority.
250.102-1-70 Delegations.
250.102-2 Contract adjustment boards.
250.103 Contract adjustments.
250.103-3 Contract adjustment.
250.103-5 Processing cases.
250.103-6 Disposition.
250.104 Residual powers.
250.104-3 Special procedures for unusually hazardous or nuclear risks.
250.104-3-70 Indemnification under contracts involving both research and development and other work.

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

Subpart 250.1—Extraordinary Contractual Actions**250.100 Definitions.**

Secretarial level, as used in this subpart, means—

(1) An official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force; and

(2) A contract adjustment board established by the Secretary concerned.

250.101 General.**250.101-2 Policy.****250.101-2-70 Limitations on payment.**

See 10 U.S.C. 2410(b) for limitations on Congressionally directed payment of a request for equitable adjustment to contract terms or a request for relief under Public Law 85-804.

250.101-3 Records.

Follow the procedures at PGI 250.101-3 for preparation of records.

250.102 Delegation of and limitations on exercise of authority.**250.102-1 Delegation of authority.**

(b) Authority under FAR 50.104 to approve actions obligating \$55,000 or less may not be delegated below the level of the head of the contracting activity.

(d) In accordance with the acquisition authority of the Under Secretary of Defense (Acquisition, Technology, and Logistics (USD (AT&L))) under 10 U.S.C. 133, in addition to the Secretary of Defense and the Secretaries of the military departments, the USD (AT&L) may exercise authority to indemnify against unusually hazardous or nuclear risks.

250.102-1-70 Delegations.

(a) *Military departments.* The Departments of the Army, Navy, and Air

Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements or agency acquisition guidance.

(b) *Defense agencies.* Subject to the restrictions on delegations of authority in 250.102-1(b) and FAR 50.102-1, the directors of the defense agencies may exercise and redelegate the authority contained in the Act and the Executive Order. The agency supplements or agency acquisition guidance shall specify the delegations and levels of authority.

(1) Requests to obligate the Government in excess of \$55,000 must be submitted to the USD (AT&L) for approval.

(2) Requests for indemnification against unusually hazardous or nuclear risks must be submitted to the USD(AT&L) for approval before using the indemnification clause at FAR 52.250-1, Indemnification Under Public Law 85-804.

(c) *Approvals.* The Secretary of the military department or the agency director must approve any delegations in writing.

250.102-2 Contract adjustment boards.

The Departments of the Army, Navy, and Air Force each have a contract adjustment board. The board consists of a Chair and not less than two nor more than six other members, one of whom may be designated the Vice-Chair. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total board membership constitutes an action of the board. Alternates may be appointed to act in the absence of any member.

250.103 Contract adjustments.**250.103-3 Contract adjustment.**

(a) Contractor requests should be filed with the procuring contracting officer (PCO). However, if filing with the PCO is impractical, requests may be filed with an authorized representative, an administrative contracting officer, or the Office of General Counsel of the applicable department or agency, for forwarding to the cognizant PCO.

250.103-5 Processing cases.

(1) At the time the request is filed, the activity shall prepare the record described at PGI 250.101-3(1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

(2) The officer or official responsible for the case shall forward to the contract adjustment board, through departmental channels, the documentation described at PGI 250.103-5.

(3) Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.103-6. The memorandum of decision shall not contain any information classified "Confidential" or higher. The board's decision will be sent to the appropriate official for implementation.

250.103-6 Disposition.

For requests denied or approved below the Secretarial level, follow the disposition procedures at PGI 250.103-6.

250.104 Residual powers.

250.104-3 Special procedures for unusually hazardous or nuclear risks.

250.104-3-70 Indemnification under contracts involving both research and development and other work.

When indemnification is to be provided on contracts requiring both research and development work and other work, the contracting officer shall insert an appropriate clause using the authority of both 10 U.S.C. 2354 and Public Law 85-804.

(a) The use of Public Law 85-804 is limited to work which cannot be indemnified under 10 U.S.C. 2354 and is subject to compliance with FAR 50.104.

(b) Indemnification under 10 U.S.C. 2354 is covered by 235.070.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203-7002 [Removed]

■ 5. Section 252.203-7002 is removed.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 208

RIN 0750-AG03

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From Federal Prison Industries (DFARS Case 2008-D015)

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 to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2008. Section 827 requires the use of competitive procedures in the acquisition of items for which Federal Prison Industries has a significant market share.

DATES: *Effective date:* August 12, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 14, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008-D015, 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 2008-D015 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

Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) amended 10 U.S.C. 2410n to require the use of competitive procedures in the acquisition of items for which Federal Prison Industries (FPI) has a significant market share. Section 827 provides that FPI shall be treated as having a significant share of the market for a product if DoD, in consultation with the Office of Federal Procurement Policy, determines that the FPI share of the DoD market for the category of products including that product is greater than 5 percent.

DoD has determined that FPI presently has a significant market share of the items in the following Federal Supply Classes (FSC). DoD will update the following list as necessary.

FSC	Description
3510	Laundry and Dry Cleaning Equipment.
5340	Miscellaneous Hardware.
5935	Connectors, Electrical.
5975	Electrical Hardware and Supplies.
5995	Cable, cord, wire assemblies; communications equipment.
6145	Wire and cable, Electrical.
7110	Office Furniture.
7210	Household Furnishings.

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. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to provide for competition in the acquisition of items for which FPI has a significant market share. The legal basis for the rule is 10 U.S.C. 2410n, as amended by Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). The rule is expected to benefit small business concerns that offer items for which FPI has a significant market share, by permitting those concerns to compete for additional DoD contract awards. The rule also could adversely impact small business concerns that provide supplies and services to FPI relative to the affected items. The rule deviates from the policy in Subpart 8.6 of the Federal Acquisition Regulation with regard to the acquisition of items from FPI. This alternate DoD policy is necessary to implement Section 827 of Public Law 110-181.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2008-D015.

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