

- 225.301–4. Adds a reference to a DoD Web site.
- 252.225–7040. Updates a reference to a DoD publication.

List of Subjects in 48 CFR Parts 204, 219, 225, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 204, 219, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 204, 219, 225, and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.7202–2 is revised to read as follows:

204.7202–2 DUNS numbers.

Requirements for use of DUNS numbers are in FAR 4.605(b) and 4.607(a).

PART 219—SMALL BUSINESS PROGRAMS

219.708 [Amended]

■ 3. Section 219.708 is amended in paragraphs (b)(2) and (c)(1) by removing “219.702(a)” and adding in its place “219.702”.

219.1204 [Amended]

■ 4. Section 219.1204 is amended in paragraph (c), in the last sentence, by removing “219.702(a)” and adding in its place “219.702”.

PART 225—FOREIGN ACQUISITION

■ 5. Section 225.301–4 is amended in paragraph (2) by revising the last sentence to read as follows:

225.301–4 Contract clause.

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(2) * * * Information on the SPOT system is available at <http://www.dod.mil/bta/products/spot.html> and <http://www.acq.osd.mil/log/PS/spot.html>.

225.1101 [Amended]

■ 6. Section 225.1101 is amended in paragraph (11)(i) introductory text by removing “paragraph (10)” and adding in its place “paragraph (11)”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7040 [Amended]

■ 7. Section 252.225–7040 is amended as follows:

■ a. By revising the clause date to read “(JUL 2009)” and

■ b. In paragraph (n)(2) by removing “DoD Directive 2310.2, Personnel Recovery” and adding in its place “DoD Directive 3002.01E, Personnel Recovery in the Department of Defense”.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 207

RIN 0750–AF39

Defense Federal Acquisition Regulation Supplement; Lease of Vessels, Aircraft, and Combat Vehicles (DFARS Case 2006–D013)

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 implement statutory provisions relating to the leasing of vessels, aircraft, and combat vehicles. The rule applies to long-term leases and charters and to contracts with a substantial termination liability.

DATES: Effective Date: July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Freeman, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–8383; facsimile 703–602–7887. Please cite DFARS Case 2006–D013.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2401, as amended by Section 815 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163), permits a military department to award a long-term lease or charter, or a contract with a substantial termination liability, for a vessel, aircraft, or combat vehicle, only if the Secretary of the military department is specifically authorized by law to award the contract and provides

the appropriate notifications to the congressional defense committees.

Prior to the enactment of Public Law 109–163, the provisions of 10 U.S.C. 2401 applied to vessels and aircraft. Section 815 of Public Law 109–163 amended 10 U.S.C. 2401 to also include combat vehicles.

DoD published a proposed rule at 72 FR 28662 on May 22, 2007, to address the provisions of 10 U.S.C. 2401. Five sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* The proposed rule unduly applies its requirements to all leases and charters instead of only long-term leases and charters.

DoD Response: The rule has been amended to clarify that its requirements apply only to long-term leases and charters, and to contracts that provide for a substantial termination liability, consistent with the statutory provisions.

2. *Comment:* One respondent stated that the approval authority specified in the proposed rule (head of the agency) is not consistent with the approval authority specified in the statute (Secretary of the military department). Another respondent recommended delegation of the approval authority to the head of the contracting activity, to be consistent with the implementation of 10 U.S.C. 2401a at DFARS 207.470, for approval of leases and charters with terms of 18 months or more.

DoD Response: The final rule specifies the Secretary of the military department as the approval authority, consistent with 10 U.S.C. 2401. However, in accordance with FAR 1.108(b), the Secretary of the military department may delegate this authority as deemed appropriate.

3. *Comment:* The term “similar agreement” should be deleted from the rule, since this term is not defined in the DFARS or in the statute.

DoD Response: The term has been excluded from the final rule.

4. *Comment:* The rule should identify under what circumstances DoD can lease vessels, aircraft, and combat vehicles and how the decision to lease should be determined. In addition, the rule should include the definitions of the terms “long-term lease” and “substantial termination liability” found in 10 U.S.C. 2401(d).

DoD Response: The recommended changes have not been adopted. The rule is intended to inform contracting officers of the requirements of 10 U.S.C. 2401, but is not intended to address all aspects of leasing. Leasing is a highly specialized area that requires close coordination between the contracting officer and legal counsel.

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 primarily relates to DoD planning and budget considerations with regard to the leasing of vessels, aircraft, and combat vehicles.

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 207

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 207 is amended as follows:

PART 207—ACQUISITION PLANNING

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

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

■ 2. Section 207.470 is amended as follows:

■ a. By redesignating paragraphs (a) and (b) as paragraphs (b) and (c) respectively;

■ b. By adding a new paragraph (a); and

■ c. In newly designated paragraph (c), by removing “Except as provided in paragraph (a) of this section” and adding in its place “Except as provided in paragraphs (a) and (b) of this section”.

The new paragraph (a) reads as follows:

207.470 Statutory requirements.

(a) *Requirement for authorization of certain contracts relating to vessels, aircraft, and combat vehicles.* The contracting officer shall not enter into any contract for the lease or charter of any vessel, aircraft, or combat vehicle, or any contract for services that would require the use of the contractor’s vessel, aircraft, or combat vehicle, unless the Secretary of the military department concerned has satisfied the requirements of 10 U.S.C. 2401, when—

(1) The contract will be a long-term lease or charter as defined in 10 U.S.C. 2401(d)(1); or

(2) The terms of the contract provide for a substantial termination liability as defined in 10 U.S.C. 2401(d)(2). Also see PGI 207.470.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 237, and 252

RIN 0750-AF80

Defense Federal Acquisition Regulation Supplement; Lead System Integrators (DFARS Case 2006-D051)

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 802 of the National Defense Authorization Act for Fiscal Year 2008. Section 802 places limitations on the award of new contracts for lead system integrator functions in the acquisition of major DoD systems.

DATES: *Effective date:* July 15, 2009.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 14, 2009, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006-D051, 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 2006-D051 in the subject line of the message.

- *Fax:* 703-602-7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Cassandra Freeman, 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: Ms. Cassandra Freeman, 703-602-8383.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 73 FR 1823 on January 10, 2008, to implement Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) with regard to limitations on the performance of lead system integrator functions by DoD contractors. On January 28, 2008, Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) placed additional limitations on DoD use of lead system integrators. This second interim rule amends the interim rule published on January 10, 2008, to implement Section 802 of Public Law 110-181.

One source submitted comments on the interim rule published on January 10, 2008. A discussion of the comments is provided below.

1. *Comment:* Section 802 of the Fiscal Year 2008 National Defense Authorization Act (Pub. L. 110-181), which was enacted after publication of the interim rule, contains a definition of “lead system integrator” that renders the interim rule definition obsolete.

DoD Response: The definition of “lead system integrator” in this second interim rule has been amended for consistency with the definition in Section 802 of Public Law 110-181.

2. *Comment:* The limitations on the award of new contracts for lead system integrator functions, in Section 802 of Public Law 110-181, will make any implementing regulations applicable to only a handful of contractors. Given the limited duration of ongoing contracts for programs that have been identified as lead system integrators, the newly created contract clauses in the interim rule are unlikely to be incorporated into a contract, because the fiscal year 2008 statutory prohibition effectively precludes their use. Therefore, DoD should withdraw or suspend the interim rule.

DoD Response: DoD agrees that the rule will apply only to a limited number of contractors and only for a limited duration. However, the law must be implemented for those situations where it is applicable.

3. *Comment:* It is inappropriate to require contractors to represent whether or not they propose to perform lead system integrator functions under vague definitions, given that the contract may be terminated for default or other remedies may be imposed at the sole discretion of the contracting officer if the contractor misrepresented its “financial interests” when that term is