

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 204 and 252**

RIN 0750-AG39

**Defense Federal Acquisition Regulation Supplement; Annual Representations and Certifications (DFARS Case 2009-D011)**

**AGENCY:** Defense Acquisition Regulations System, 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 conform it to changes in the Federal Acquisition Regulation (FAR) relating to annual representations and certifications.

**DATES:** *Comment date:* Comments on this proposed rule should be submitted in writing to the address shown below on or before January 24, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2009-D011, using any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009-D011 in the subject line of the message.

*Fax:* 703-602-0350.

*Mail:* Defense Acquisition Regulations System, Attn: Mr. Julian E. Thrash, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

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

To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Julian E. Thrash, 703-602-0310.

**SUPPLEMENTARY INFORMATION:****I. Background**

DFARS 252.204-7007, Alternate A, Annual Representations and Certifications, was structured to supplement paragraph (d) of FAR 52.204-8, Annual Representations and

Certifications (formerly paragraph (c)). FAR 52.204-8 was changed to add a new paragraph (c), which indicates the applicable representations and certifications in ORCA. The representations and certifications in ORCA are those provisions and clauses listed in the prescribing language contained in FAR 4.1202. The change also requires the DFARS representations and certifications in ORCA to be listed in DFARS 252.204-7007. The DFARS representations and certifications are those provisions and clauses contained in the prescribing language listed in DFARS 204.1202.

Further, DFARS 252.212-7000, Offeror Representations and Certifications-Commercial Items, should be removed from DFARS 204.1202(2)(ii). The prescribing language requires inclusion of this provision in all solicitations for commercial items exceeding the simplified acquisition threshold. Further, the inclusion of 252.204-7007, Alternate A, Annual Representations and Certifications, is applicable when the provision at FAR 52.204-8, Annual Representations and Certifications, is included in solicitations, except for commercial item solicitations.

In addition, the proposed changes include the following:

- Delete the reference to 252.216-7003, and 252.239-7011 from DFARS 204.1202, because these are clauses, not provisions.
- Revise DFARS 252.204-7007 to incorporate the listing of representations or certifications in ORCA that are applicable to the solicitation.
- Address in paragraph (d) of DFARS 252.204-7007 the applicability of representations and certifications in ORCA, as set forth in provisions and clauses at DFARS 252.209-7005, 252.225-7000, 252.225-7020, 252.225-7022, 252.225-7031, 252.225-7035, 252.225-7042, 252.229-7003, 252.229-7005, and 252.247-7022.

**II. Executive Order 12866**

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

**III. Regulatory Flexibility Act**

DoD does not expect this proposed 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 change is to internal Government operating procedures. Therefore, an initial regulatory flexibility analysis has not been

performed. DoD invites comments from small entities and other interested parties.

DoD will also consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, (DFARS case 2009-D011), in correspondence.

**IV. 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 204 and 252**

Government procurement.

**Clare M. Zebrowski,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 204 and 252 as follows:

1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

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

**PART 204—ADMINISTRATIVE MATTERS**

2. Amend section 204.1202 by removing paragraphs (2)(ii), (2)(iii), and (2)(xi); redesignating paragraphs (2)(iv) and (2)(v) as paragraphs (2)(ii) and (2)(iii), respectively; redesignating paragraphs (2)(vi) through (2)(x) as paragraphs (2)(v) through (2)(ix), respectively; redesignating paragraph (2)(xii) as paragraph (2)(x) and adding paragraph (2)(iv), to read as follows:

**204.1202 Solicitation provision and contract clause.**

\* \* \* \* \*

(2) \* \* \*

(iv) 252.225-7022, Trade Agreements Certificate-Inclusion of Iraqi End Products.

\* \* \* \* \*

3. Revise section 252.204-7007 to read as follows:

**252.204-7007 Alternate A, Annual Representations and Certifications.****ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS**

(DATE)

As prescribed in 204.1202, substitute the following paragraphs (d) and (e) for paragraph (d) of the provision at FAR 52.204-8:

(d) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) 252.209–7005, Reserve Officer Training Corps and Military Recruiting on Campus. This clause applies to all solicitations and contracts with institutions of higher education.

(ii) 252.225–7000, Buy American Act—Balance of Payments Program Certificate. This provision applies to solicitations containing the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(iii) 252.225–7020, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 252.225–7021, Trade Agreements.

(iv) 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products. This provision applies to solicitations containing the clause at 252.225–7021, Trade Agreements, used with its Alternate I.

(v) 252.225–7031, Secondary Arab Boycott of Israel. This provision applies to all solicitations unless an exception applies or a waiver has been granted in accordance with 225.7604.

(vi) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate. This provision applies to solicitations that include the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program. Alternate I applies when the clause at 252.225–7036 is used with its Alternate I.

(vii) 252.225–7042, Authorization to Perform. This provision applies to solicitations when contract performance will be wholly or in part in a foreign country.

(viii) 252.229–7003, Tax Exemptions (Italy). This clause applies to solicitations and contracts when contract performance will be in Italy.

(ix) 252.229–7005, Tax Exemptions (Spain). This clause applies to solicitations and contracts when contract performance will be in Spain.

(x) 252.247–7022, Representation of Extent of Transportation by Sea. This provision applies to all solicitations except—

(A) Those for direct purchase of ocean transportation services; or

(B) Those with an anticipated value at or below the simplified acquisition threshold.

(e) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) Web site at <https://orca.bpn.gov/>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraphs (d) and (e) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (*see* FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS Clause #	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

[FR Doc. 2010–29495 Filed 11–23–10; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 215**

**Defense Federal Acquisition Regulation Supplement; Discussions Prior to Contract Award (DFARS Case 2010–D013)**

**AGENCY:** Defense Acquisition Regulations System, 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 strongly encourage discussions prior to award for source selections of procurements estimated at \$100 million or more. The proposed change was recommended by the DoD Source Selection Joint Analysis Team.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before

January 24, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2010–D013, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2010–D013 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

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

To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–1302; facsimile 703–602–0350. Please cite DFARS Case 2010–D013.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This DFARS case was initiated at the request of the DoD Source Selection Joint Analysis Team (JAT), chartered by the Deputy Under Secretary of Defense (Acquisition, Technology, and Logistics) to revise the DoD source selection procedures (which are being published separately).

In their examination of current source selection processes utilized within the DoD, members of the JAT determined that there is a significant positive correlation between high-dollar value source selections conducted without discussions and protests sustained. Therefore, to improve the quality of high-dollar value, more complex source selections and reduce turbulence and inefficiency resulting from sustained protests, the JAT recommended that discussions prior to award be strongly encouraged for source selections with a dollar value of \$100 million or more.

DoD research has indicated that holding meaningful discussions with industry prior to contract award on high-dollar value, complex requirements improves both industry’s understanding of solicitation requirements and the Government’s understanding of industry issues. By identifying and discussing these issues prior to submission of final proposals, the Government is often able to issue clarifying language. The modified requirements documentation allows