

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: January 11, 2011.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216, 219, 225, 227, 233, 245, 249, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes and guidance to contracting officers.

DATES: *Effective Date:* January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 703-602-0311; facsimile 703-602-0350.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

- *216.504.* Adds a paragraph inadvertently omitted from an interim rule published at 75 FR 40716 on July 13, 2010.
- *Subpart 219.3.* Adds new subpart with language to direct contracting officers to additional procedures and guidance.
- *225.7503.* Thresholds are updated (see 75 FR 45072, August 2, 2010, DFARS Case 2009-D003) and minor corrections to inconsistencies in prescription of clause alternates.
- *227.7004.* Correct the format of the list of offices to contact.
- *227.7203-5.* Grammar is corrected and commas added for clarity.
- *227.7203-6, 227.7204.* Corrects the name of the Small Business Innovation Research Program referenced in these sections.
- *227.7203-14.* Corrects reference to DFARS 246.7.

- *Subpart 233.1.* Adds new subpart with language to direct contracting officers to additional procedures and guidance.
- *245.1, 245.2, and 245.4.* Adds language in subpart 245.1 and adds two new subparts to direct contracting officers to additional Government property procedures and guidance.
- *249.7000.* Updates the reference to the Canadian Supply Manual for terminations for convenience.
- *252.212-7001.* Corrects a clause number in (b)(11)(iii) and reverses the order of two clauses in paragraphs (c)(1) and (2).
- *252.219-7004.* Updates thresholds (see 75 FR 45072, August 2, 2010, DFARS Case 2009-D003).
- *252.225-7009.* Changes an incorrect numerical reference.
- *252.227.7016; 252.227-7017; 252.227-7018; and 252.227-7025.* Corrects the name of the Small Business Innovation Research Program where incorrectly referenced as the "Small Business Innovative Research Program."

List of Subjects in 48 CFR Parts 216, 219, 225, 227, 233, 245, 249, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 216, 219, 225, 227, 233, 245, 249, and 252 are amended as follows:

- 1. The authority citation for 48 CFR parts 216, 219, 225, 227, 233, 245, 249, and 252 continues to read as follows:

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

PART 216—TYPES OF CONTRACTS

- 2. Section 216.504 is amended to add paragraph (c)(1)(ii)(D)(3) to read as follows:

216.504 Indefinite-quantity contracts.

(c)(1)(ii)(D) * * *

(3) A copy of any determination made in accordance with FAR 16.504(c)(1)(ii)(D) shall be submitted to: Deputy Director, Defense Procurement (Contract Policy and International Contracting), OUSD (AT&L) DPAP (CPIC), 3060 Defense Pentagon, Washington, DC 20301-3060.

PART 219—SMALL BUSINESS PROGRAMS

- 3. Subpart 219.3 is added to read as follows:

Subpart 219.3 Determination of Small Business Status for Small Business Programs

Sec.

219.303 Determining North American Industry Classification System (NAICS) codes and size standards.

Subpart 219.3 Determination of Small Business Status for Small Business Programs

219.303 Determining North American Industry Classification System (NAICS) codes and size standards.

Contracting officers shall follow the procedures for "Correctly Identifying Size Status of Contractors" in the OUSD (AT&L) DPAP memorandum dated July 21, 2010.

PART 225—FOREIGN ACQUISITION

- 4. Section 225.7503 is amended by revising paragraph (b) to read as follows:

225.7503 Contract clauses.

* * * * *

(b)(1) Use the clause at 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$7,804,000 or more.

(2) For acquisitions with a value of \$7,804,000 or more, but less than \$9,110,318, use the clause with its Alternate I, unless the acquisition is in support of operations in Afghanistan.

(3) If the acquisition is for construction with a value of \$9,110,318 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of \$7,804,000 or more, but less than \$9,110,318, and is in support of operations in Afghanistan, use the clause with its Alternate III.

PART 227—PATENTS, DATA, AND COPYRIGHTS

- 5. Section 227.7004 is amended by revising paragraph (c) to read as follows:

227.7004 Requirements for filing an administrative claim for patent infringement.

* * * * *

(c) Any department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other departments that may have an interest therein with a copy of such communication and the acknowledgement thereof.

(1) For the Department of the Army—Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency;

(2) For the Department of the Navy—the Patent Counsel for Navy, Office of Naval Research;

(3) For the Department of the Air Force—Chief, Patents Division, Office of the Judge Advocate General;

(4) For the Defense Logistics Agency—the Office of Counsel;

(5) For the National Security Agency—the General Counsel;

(6) For the Defense Information Systems Agency—the Counsel;

(7) For the Defense Threat Reduction Agency—the General Counsel; and

(8) For the National Geospatial-Intelligence Agency—the Counsel.

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■ 6. Section 227.7203–5 is amended by revising paragraph (c)(1), to read as follows:

227.7203–5 Government rights.

* * * * *

(c) * * *

(1) The Government obtains restricted rights in noncommercial computer software, required to be delivered or otherwise provided to the Government under a contract, that was developed exclusively at private expense.

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227.7203–6 [Amended]

■ 7. Section 227.7203–6 is amended in paragraph (a)(1) by removing “Innovative” and adding in its place “Innovation”.

227.7203–14 [Amended]

■ 8. Section 227.7204 is amended in paragraph (b)(2)(i) by removing “246.770” and adding in its place “246.7”.

227.7204 [Amended]

■ 9. Section 227.7204 is amended by removing “Innovative” and adding in its place “Innovation” in the heading and in the text.

PART 233—PROTESTS, DISPUTES, AND APPEALS

■ 10. Subpart 233.1 is added to read as follows:

Subpart 233.1—Protests

Sec.

233.170 Briefing requirement for protested acquisitions valued at \$1 billion or more.

Subpart 233.1—Protests

233.170 Briefing requirement for protested acquisitions valued at \$1 billion or more.

Follow the procedures at PGI 233.170 for briefing protested acquisitions valued at \$1 billion or more.

PART 245—GOVERNMENT PROPERTY

■ 11. Section 245.102 is amended by adding introductory text to read as follows:

245.102 Policy.

(See the policy guidance at PGI 245.102–70.)

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■ 12. Section 245.103 is added to read as follows:

245.103 General.

(1) Follow the procedures at PGI 245.103–70 for furnishing Government property to contractors.

(2) Follow the procedures at PGI 245.103–71 for transferring Government property accountability.

■ 13. Subpart 245.2 is added to read as follows:

Subpart 245.2—Solicitation and Evaluation Procedures

Sec.

245.201 Solicitation.

245.201–70 Definitions.

245.201–71 GFP attachments to solicitations and awards.

245.201–72 Contracting office responsibilities.

245.201–73 Security classification.

Subpart 245.2—Solicitation and Evaluation Procedures

245.201 Solicitation.

245.201–70 Definitions.

See the definitions at PGI 245.201–70.

245.201–71 GFP attachments to solicitations and awards.

See PGI 245.201–71 for procedures for preparing GFP attachments to solicitations and awards.

245.201–72 Contracting office responsibilities.

See PGI 245.201–72 for contracting office responsibilities.

245.201–73 Security classification.

Follow the procedures at PGI 245.201–73 for security classification.

■ 14. Subpart 245.4 is added to read as follows:

Subpart 245.4—Title to Government Property

Sec.

245.402 Title to contractor-acquired property.

245.402–70 Policy.

245.402–71 Delivery of contractor-acquired property.

Subpart 245.4—Title to Government Property

245.402 Title to contractor-acquired property.

245.402–70 Policy.

Review the guidance and follow the procedures at PGI 245.402–70 with regard to recording and financial/accounting treatment of contractor-acquired property.

245.402–71 Delivery of contractor-acquired property.

Follow the procedures at PGI 245.402–71 for the delivery of contractor-acquired property.

PART 249—TERMINATION OF CONTRACTS

■ 15. Section 249.7000, paragraph (a)(3), is revised to read as follows:

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) * * *

(3) The Canadian Supply Manual, Chapter 8, Annex 8.3, available at <http://www.tpsgc-pwpsc.gc.ca/app-acq/ga-sm/index-eng.html>, “Termination for Convenience Process, Public Works and Government Services Canada.”

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. Section 252.212–7001 is amended by:

■ a. Amending the clause date by removing “(DEC 2010)” and adding in its place “(JAN 2011)”;

■ b. Amending paragraph (b)(11)(iii) by removing “252.225–7001” and adding in its place “252.225–7021”; and

■ c. Removing paragraph (c)(1); redesignating paragraph (c)(2) as paragraph (c)(1); and adding a new paragraph (c)(2) to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

* * * * *

(c) * * *

(2) 252.237–7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Public Law 108–375).

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■ 17. Section 252.219–7004 is revised to read as follows:

252.219–7004 Small business subcontracting plan (test program).

As prescribed in 219.708(b)(1)(B), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (JAN 2011)

(a) Definitions.

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, Web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

Subcontract, as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Contractor's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of section 834 of Pub. L. 101-189, as amended, shall be included in and made a part of this contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of section 211 of Public Law 95-507.

(c) The Contractor shall—

(1) Ensure that subcontractors with subcontracting plans agree to submit an Individual Subcontract Report (ISR) and/or Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS).

(2) Provide its contract number, its DUNS number, and the e-mail address of the Contractor's official responsible for acknowledging or rejecting the ISR to all first-tier subcontractors, who will be required to submit ISRs, so they can enter this information into the eSRS when submitting their reports.

(3) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging or rejecting the ISRs to its subcontractors with subcontracting plans who will be required to submit ISRs.

(4) Acknowledge receipt or reject all ISRs submitted by its subcontractors using eSRS.

(d) The Contractor shall submit SSRs using eSRS at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower-tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged

business credit from a member firm of the Alaska Native Corporations or an Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports.

(1) This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating as a separate profit center) basis, as negotiated in the comprehensive subcontracting plan with the Defense Contract Management Agency.

(2) This report encompasses all subcontracting under prime contracts and subcontracts with the Department of Defense, regardless of the dollar value of the subcontracts, and is based on the negotiated comprehensive subcontracting plan.

(3) The report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. Reports are due 30 days after the close of each reporting period.

(4) The authority to receipt or reject the SSR resides with the Comprehensive Subcontracting Program Division, the Defense Contract Management Agency Small Business Center.

(e) All reports submitted at the close of each fiscal year shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. The authority to acknowledge receipt or reject the year-end report resides with the Comprehensive Subcontracting Program Division, the Defense Contract Management Agency Small Business Center.

(f) The failure of the Contractor or subcontractor to comply in good faith with the clause of this contract entitled "Utilization of Small Business Concerns," or an approved plan required by this clause, shall be a material breach of the contract.

(g) The Contractor shall include, in contracts that offer subcontracting possibilities, are expected to exceed \$650,000 (\$1.5 million for construction of any public facility), and are required to include the clause at 52.219-8, Utilization of Small Business Concerns—

(1) FAR 52.219-9, Small Business Subcontracting Plan, and 252.219-7003 Small Business Subcontracting Plan (DoD Contracts), when the Contracting Officer has included these clauses in the contract for purposes of flowdown to subcontractors, or

(2) 52.219-9, Small Business Subcontracting Plan, with its Alternate III, and 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), with its Alternate I, when the Contracting Officer has included these clauses in the contract for flowdown to subcontractors to allow for submission of SF 294s in lieu of ISRs, or

(3) 252.219-7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that

participate in the test program described in DFARS 219.702.

(End of clause)

■ 18. Section 252.225-7009 is amended by revising the clause date, and revising paragraph (a)(10) to read as follows:

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.

* * * * *

RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (JAN 2011)

(a) * * *

(10) *Qualifying country* means any country listed in the definition of "Qualifying country" at 225.003 of the Defense Federal Acquisition Regulation Supplement (DFARS).

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252.227-7016 [Amended]

■ 19. Section 252.227-7016 is amended by:

■ a. Amending the clause date by removing "(JUN 1995)" and adding in its place "(JAN 2011)"; and

■ b. Removing the term "Innovative" wherever it occurs in paragraphs (a)(1), (a)(2), and (c)(2) and adding in its place the term "Innovation".

252.227-7017 [Amended]

■ 20. Section 252.227-7017 is amended by:

■ a. Amending the clause date by removing "(JUN 1995)" and adding in its place "(JAN 2011)"; and

■ b. Removing the term "Innovative" wherever it occurs in paragraphs (a)(1), (a)(2), and (b) and adding in its place the term "Innovation".

252.227-7018 [Amended]

■ 21. Section 252.227-7018 is amended by:

■ a. Amending the clause date by removing "(JUN 1995)" and adding in its place "(JAN 2011)"; and

■ b. Removing the term "Innovative" wherever it occurs in paragraphs (f)(2) through (f)(4) and adding in its place the term "Innovation".

252.227-7025 [Amended]

■ 22. Section 252.227-7025 is amended by:

■ a. Amending the clause date by removing "(JUN 1995)" and adding in its place "(JAN 2011)"; and

■ b. Removing the term "Innovative" wherever it occurs in paragraph (a)(3) and adding in its place the term "Innovation".

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