

and applicable discounts. In addition, describe the nature of the market; or

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(3) The Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(4) *Requirements for certified cost or pricing data.* If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(i) The Offeror shall prepare and submit certified cost or pricing data and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-2 are incorporated as a mandatory format to be used, unless the Contracting Officer and the Offeror agree to a different format.

(ii) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(c) If the Offeror is the Canadian Commercial Corporation, certified cost or pricing data are not required. If the Contracting Officer notifies the Canadian Commercial Corporation that additional data other than certified cost or pricing data are required in accordance with 225.870-4(c), the Canadian Commercial Corporation shall obtain and provide the following:

(1) Profit rate or fee (as applicable).

(2) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404-1).

(3) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [*U.S. Contracting Officer to provide description of the data required in accordance with FAR 15.403-3(a)(1) with the notification*].

(4) As specified in FAR 15.403-3(a)(4), an offeror who does not comply with a requirement to submit data that the U.S. Contracting Officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror.

(d) If negotiations are conducted, the negotiated price should not exceed the offered price.

(End of provision)

#### 252.215-7009 [Amended]

■ 13. Section 252.215-7009 is amended by, in the introductory text, removing “215.408(6)” and adding “215.408(5)” in its place.

[FR Doc. 2013-25728 Filed 10-30-13; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 237

RIN 0750-AI05

### Defense Federal Acquisition Regulation Supplement: Private Sector Notification Requirements of In-Sourcing Actions DFARS Case 2012-D036

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

**ACTION:** Interim rule.

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act regarding private sector notification of in-sourcing actions.

**DATES:** *Effective date:* October 31, 2013.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before December 30, 2013, to be considered in the formation of a final rule.”

**ADDRESSES:** Submit comments identified by DFARS Case 2012-D036 using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>

○ *www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2012-D036” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2012-D036.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2012-D036 on your attached document.

○ *Email:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2012-D036 in the subject line of the message.

○ *Fax:* 571-372-6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Annette Gray, 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 [www.regulations.gov](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:

Annette Gray, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6093; facsimile 571-372-6101.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This interim rule revises DFARS 237.102-79 to implement section 938 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 regarding private sector notification of in-sourcing actions.

##### II. Discussion and Analysis

Section 938 of the NDAA requires the Secretary of Defense to establish procedures for the timely notification of any contractor who performs a function that the Secretary plans to convert (in-source) to performance by DoD civilian employees. A written notification will be provided to affected incumbent contractors within 20 business days of the contracting officer's receipt of a decision by the cognizant component in-sourcing program official to in-source services. The notification will summarize why the services are being insourced and must be coordinated with the component's in-sourcing program official. A copy of the notification will be provided to the congressional defense committees.

##### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This

rule is not a major rule under 5 U.S.C. 804.

#### IV. Regulatory Flexibility Act

DoD does not expect this interim 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 it impacts only those incumbent contractors for which an in-sourcing determination has been made. The DFARS change relates solely to a notification requirement of a decision, made outside of acquisition regulatory channels, to convert a contracted function to performance by DoD civilian employees. The impact of this interim rule will be to heighten the awareness of impacted firms. An initial regulatory flexibility analysis has been performed and is summarized as follows:

This action implements section 938 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012 regarding private sector notification of in-sourcing actions. Section 938 of the NDAA requires the Secretary of Defense to establish procedures for the timely notification of any contractor that performs a function that the Secretary plans to convert (in-source) to performance by DoD civilian employees and to also provide the congressional defense committees a copy of any such notification.

The interim rule will apply to all small business concerns that have contracts with DoD agencies that are being in-sourced. The most recent data from the DoD Office of Small Business Programs for fiscal years 2009 thru 2012 shows an average of 59,362 small business concerns have contracts with DoD. The degree of potential impact of this rule to those concerns, however, is unknown since there is no way to gauge in advance the extent of any future in-sourcing decisions.

There are no projected reporting, recordkeeping, and other compliance requirements associated with this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD has not identified any alternatives that would fulfill the requirements of the statute and reduce impact on small businesses. Any impact of the rule is expected to be beneficial to small businesses, by giving them timely notification of planned in-sourcing actions.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in

accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2012–D036), in correspondence.

#### V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, pursuant to 41 U.S.C. 1707(d), that urgent and compelling reasons exist to promulgate this rule on an interim basis without prior opportunity for public comment. This action is necessary to implement section 938 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012, which requires DoD to provide notification to the private sector of in-sourcing action determinations. Section 938 requires the Secretary of Defense to establish procedures for the timely notification of any incumbent contractor who performs a function that the Secretary plans to convert (in-source) to performance by DoD civilian employees. The notification must also be provided to the congressional defense committees. In-sourcing decisions may have a significant economic effect on firms that have contracts with DoD. Firms that are not notified on a timely basis of an in-sourcing determination that impacts them have less time to prepare for lost revenue and to make staffing adjustments. The rule, in addition to ensuring that there will be timely notification to affected contractors, should help facilitate a more seamless transition in services when implementing in-sourcing requirements. Nonetheless, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

#### List of Subjects in 48 CFR Part 237

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 237 are amended as follows:

#### PART 237—SERVICE CONTRACTING

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

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 237.102–79 is revised to read as follows:

#### 237.102–79 Private sector notification requirements in support of in-sourcing actions.

In accordance with 10 U.S.C. 2463, contracting officers shall provide written notification to affected incumbent contractors of Government in-sourcing determinations. Notification shall be provided within 20 business days of the contracting officer's receipt of a decision from the cognizant component in-sourcing program official. The notification will summarize the requiring official's final determination as to why the service is being in-sourced and shall be coordinated with the component's in-sourcing program official. No formal hiring or contract-related actions may be initiated prior to such notification, except for preliminary internal actions associated with hiring or contract modification. The memorandum on private sector notification requirements in support of in-sourcing actions is available at PGI 237.1, under the Supplemental Information tab.

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#### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Part 245

RIN 0750–A103

#### Defense Federal Acquisition Regulation Supplement: Approval of Rental Waiver Requests (DFARS Case 2013–D006)

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the Director of Defense Security Cooperation Agency from the approval process for waiver or reduction of charges for the use of Government property on work for foreign governments or international organizations.

**DATES:** *Effective* October 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Annette Gray, telephone 571–372–6093.

**SUPPLEMENTARY INFORMATION:**