

PART 225—FOREIGN ACQUISITION**225.7003–3 [Amended]**

- 3. Section 225.7003–3 is amended by—
- a. Removing the introductory text;
 - b. In paragraph (c)(2), removing “PGI 225.7003–3” and adding “PGI 225.7003–3(c)” in its place; and
 - c. In the introductory text of paragraph (d), removing “PGI 225.7003–3” and adding “PGI 225.7003–3(d)” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Section 252.204–7007 is amended by—
- a. Removing the clause date “(MAY 2013)” and adding “(MAR 2014)” in its place.
 - b. Revising paragraph (d)(2) to read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d) * * *

(2) The following representations or certifications in SAM are applicable to this solicitation as indicated by the Contracting Officer: [*Contracting Officer check as appropriate.*]

- ___ (i) 252.209–7002, Disclosure of Ownership or Control by a Foreign Government.
- ___ (ii) 252.225–7000, Buy American—Balance of Payments Program Certificate.
- ___ (iii) 252.225–7020, Trade Agreements Certificate.
Use with Alternate I.
- ___ (iv) 252.225–7031, Secondary Arab Boycott of Israel.
- ___ (v) 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate.
Use with Alternate I.
Use with Alternate II.
Use with Alternate III.
Use with Alternate IV.
Use with Alternate V.

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- 5. Section 252.209–7004 is amended by—
- a. Removing the clause date “(DEC 2006)” and adding “(MAR 2014)” in its place; and
 - b. In paragraph (a), removing “Excluded Parties List” and adding “Exclusions section of the System for Award Management” in its place.

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 212****RIN 0750–AI28****Defense Federal Acquisition Regulation Supplement: Extension of Pilot Program on Acquisition of Military-Purpose Nondevelopmental Items (DFARS Case 2014–D007)**

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

ACTION: Final rule.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2014. This rule extends the expiration date of the pilot program for acquisition of military-purpose nondevelopmental items.

DATES: Effective March 28, 2014.

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

SUPPLEMENTARY INFORMATION:**I. Background**

Section 866 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 (Pub. L. 111–383), enacted on January 7, 2011, authorized the Secretary of Defense to carry out a pilot program to assess the feasibility and advisability of acquiring military-purpose nondevelopmental items in accordance with the streamlined procedures of the pilot program. Under this pilot program, DoD may enter into contracts with nontraditional defense contractors for the purpose of enabling DoD to acquire items that otherwise might not have been available to DoD, assist DoD in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs, and protect the interests of the United States in paying fair and reasonable prices for the item or items acquired.

This pilot program is designed to test whether the streamlined procedures, similar to those available for commercial items, can serve as an effective incentive for nontraditional defense contractors to (1) channel investment and innovation into areas that are useful to DoD and (2) provide items developed exclusively at private expense to meet validated military requirements.

This final rule amends DFARS subpart 212.71, Pilot Program for

Acquisition of Military-Purpose Nondevelopmental Items, to implement section 814, Extension of Pilot Program of Military Purpose Nondevelopmental Items, of the National Defense Authorization Act for FY 2014. This rule extends the authority for this pilot program from January 6, 2016, to December 31, 2019.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute that applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. Publication for public comment is not required because the rule does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors as it merely extends the expiration date of an existing pilot program pursuant to statutory directive.

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

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 and does not require publication for public comment.

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).

List of Subjects in 48 CFR Part 212

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 212 is amended as follows:

PART 212—ACQUISITION OF COMMERCIAL ITEMS

- 1. The authority citation for 48 CFR part 212 continues to read as follows:

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

212.7102–3 [Amended]

- 2. Section 212.7102–3 is amended by removing “January 6, 2016” from paragraph (a) and adding in its place “December 31, 2019”.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 235 and 252

RIN 0750–AI10

Defense Federal Acquisition Regulation Supplement: Clauses With Alternates—Research and Development Contracting (DFARS Case 2013–D026)

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 create an overarching prescription for a research and development-related clause with an alternate. The rule also includes separate prescriptions for the basic and alternate clause and includes the full text of the alternate clause.

DATES: Effective March 28, 2014.

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 78 FR 73475 on December 6, 2013, to amend the presentation of the DFARS part 235 clause with its alternate and their prescriptions. This final rule addresses the single clause affected, which is 252.235–7003, Frequency Authorization, and its alternate.

One public comment was received; however it was not related to the proposed rule and therefore not considered in drafting the final rule. Minor editorial changes were made to standardize language used in the final rule for the clause prescriptions and prefaces in order to provide uniform arrangement in the regulations.

II. 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.

III. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows.

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to create prescriptions for the basic version and the alternate of a DFARS part 235 solicitation and contract clause and to include the full text of the alternate clause.

The public did not raise any issues in response to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy of the Small Business Administration did not submit any comments in response to the rule.

Potential offerors, including small businesses, may be affected by this rule by seeing an unfamiliar format for clause alternates in solicitations and contracts issued by DoD contracting activities. According to the Federal Procurement Data System, in fiscal year

2012, DoD made approximately 270,000 contract awards (not including modification and orders) that exceeded the micro-purchase threshold, of which approximately 180,000 (67%) were awarded to small businesses. It is unknown how many of these contracts were awarded that included an alternate to a DFARS provision or clause.

Nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how clause alternates are presented in the solicitations and contracts will be changed. This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new format of the clause alternates in full text contained in contracts issued by any DoD contracting activity. The rule also anticipates saving contractors time by making all paragraph substitutions from the basic version of the clause, and not requiring the contractors to read inapplicable paragraphs contained in the basic version of the clause. The overall burden caused by this rule is expected to be negligible and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that will accomplish the objectives of the rule.

IV. 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).

List of Subjects in 48 CFR Parts 235 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 235 and 252 are amended as follows:

- 1. The authority citation for 48 CFR parts 235 and 252 continues to read as follows:

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

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

- 2. In section 235.072, revise paragraph (b) to read as follows:

235.072 Additional contract clauses.

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