

preparation of source selection plans and examples of source selection evaluation factors. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

- Update references to the clauses at FAR 52.219–8 and 52.219–9, to reflect the current clause titles.

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 does not expect this 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 rule makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D077.

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 215

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 215 as follows:

1. The authority citation for 48 CFR part 215 continues to read as follows:

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

PART 215—CONTRACTING BY NEGOTIATION

215.000 [Removed]

2. Section 215.000 is removed.

Subpart 215.2—[Removed]

3. Subpart 215.2 is removed.
4. Sections 215.303 through 215.305 are revised to read as follows:

215.303 Responsibilities.

- (b)(2) For high-dollar value and other acquisitions, as prescribed by agency

procedures, the source selection authority shall approve a source selection plan before the solicitation is issued. Follow the procedures at PGI 215.303(b)(2) for preparation of the source selection plan.

215.304 Evaluation factors and significant subfactors.

- (c)(i) In acquisitions that require use of the clause at FAR 52.219–9, Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable source selection process (see FAR 15.101–2), the extent of participation of small businesses and historically black colleges or universities and minority institutions in performance of the contract shall be addressed in source selection. The contracting officer shall evaluate the extent to which offerors identify and commit to small business and historically black college or university and minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

- (A) See PGI 215.304(c)(i)(A) for examples of evaluation factors.

- (B) Proposals addressing the extent of small business and historically black college or university and minority institution performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219–9 and should be structured to allow for consideration of offers from small businesses.

- (C) When an evaluation assesses the extent that small businesses and historically black colleges or universities and minority institutions are specifically identified in proposals, the small businesses and historically black colleges or universities and minority institutions considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9 to facilitate compliance with 252.219–7003(g).

215.305 Proposal evaluation.

- (a)(2) *Past performance evaluation.* When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219–8, Utilization of Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219–9, Small Business Subcontracting Plan, the evaluation factors shall include the past

performance of offerors in complying with requirements of that clause.

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2003–D008]

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: 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 update text pertaining to the acquisition of supplies and services from foreign sources. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 23, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D008, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Defense Acquisition Regulations Web Site:* <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2003–D008 in the subject line of the message.

- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

- *Hand Delivery/Courier:* Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the

efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation Initiative. The proposed changes include—

- Deletion of redundant or unnecessary text at DFARS 225.000, 225.171, 225.871–1(b), 225.7301(a)(1) through (3), and 225.7306.
- Deletion of text at DFARS 225.001, 225.504, 225.802, 225.870–1(d), 225.870–5, 225.870–7, 225.871–5, 225.872–4, 225.872–5(b) and (c), 225.872–6(c), 225.873–2, 225.902, 225.903, 225.7301(c) and (d), and 225.7302 containing internal DoD procedures, guidance, or information. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.
- Clarification of DFARS text as follows:
 - 225.401–70—Addition of a statutory reference.
 - 225.408—Clarification that the exception from FAR 25.408(a)(4) for overseas acquisitions applies only to the requirement for submission of offers in U.S. dollars.
 - 225.701—Expansion of cross-reference to restrictions on contracting with firms owned or controlled by foreign governments that support terrorism (from 209.104–1(g)(i) to 209.104–1(g)).
 - 225.802–70—Addition of a reference to the Army in Europe Regulation 715–9, for procedures for work performed in Germany.
 - 225.871–6—Clarification that property that is jointly acquired by the members of a NATO cooperative project may be disposed of in accordance with the terms of the cooperative project agreement, without regard to any laws of the United States applicable to the disposal of property owned by the United States.
 - 225.7003—Clarification that the waiver procedures in 225.7003 apply only if specifically authorized by reference elsewhere in subpart 225.70.

- 225.7303–2(a)(3) and 225.7307—Addition of cross-references.
- 225.7501(a)(2)(iii)—Deletion of a reference to DoD Directive, 4120.3, Defense Standardization and Specification Program, which was cancelled in 1991.

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 does not expect this 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 rule makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D008.

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 Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 225 and 252 as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

225.000 [Removed]

2. Section 225.000 is removed.
3. Section 225.001 is revised to read as follows:

225.001 General.

For guidance on evaluating offers of foreign end products, see PGI 225.001.

225.171 [Removed]

4. Section 225.171 is removed.
5. Section 225.401–70 is amended in the introductory text by revising the last sentence to read as follows:

225.401–70 Products subject to trade agreements.

* * * However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum, in accordance with Section 8094 of Public Law 103–139.

6. Section 225.408 is revised to read as follows:

225.408 Procedures.

(a)(4) The requirements of FAR 25.408(a)(4), on submission of offers in U.S. dollars, do not apply to overseas acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.

7. Section 225.504 is revised to read as follows:

225.504 Evaluation examples.

For examples that illustrate the evaluation procedures in 225.502(c)(ii), see PGI 225.504.

8. Section 225.701 is revised to read as follows:

225.701 Restrictions.

See 209.104–1(g) for restrictions on contracting with firms owned or controlled by foreign governments.

9. Section 225.802 is revised to read as follows:

225.802 Procedures.

(b) Information on memoranda of understanding and other international agreements is available at PGI 225.802(b).

10. Section 225.802–70 is amended by adding paragraph (c) to read as follows:

225.802–70 Contracts for performance outside the United States and Canada.

* * * * *

(c) For work performed in Germany, eligibility for logistics support and base privileges of contractor employees is governed by U.S.-German bilateral agreements. Follow the procedures in Army in Europe Regulation 715–9, available at <http://www.chrma.hqsareur.army.mil/docper>.

11. Section 225.870–1 is amended by revising paragraph (d) and removing paragraph (e). The revised text reads as follows:

225.870–1 General.

* * * * *

(d) For additional information on production rights, data, and information; services provided by Canadian Commercial Corporation; audit; and inspection, see PGI 225.870–1(d).

12. Section 225.870–5 is revised to read as follows:

225.870-5 Contract administration.

Follow the contract administration procedures at PGI 225.870-5.

13. Section 225.870-7 is revised to read as follows:

225.870-7 Acceptance of Canadian supplies.

For information on the acceptance of Canadian supplies, see PGI 225.870-7.

14. Section 225.871 is revised to read as follows:

225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

15. Section 225.871-1 is revised to read as follows:

225.871-1 Scope.

This section implements 22 U.S.C. 2767 and 10 U.S.C. 2350b.

16. Section 225.871-5 is amended by revising paragraph (b) and removing paragraph (c). The revised text reads as follows:

225.871-5 Directed subcontracting.

* * * * *

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. However, the agreement shall clearly state the general provisions for work sharing at the prime and subcontract level. For additional information on cooperative project agreements, see PGI 225.871-5.

17. Section 225.871-6 is revised to read as follows:

225.871-6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement, without regard to any laws of the United States applicable to the disposal of property owned by the United States.

18. Section 225.872-4 is revised to read as follows:

225.872-4 Individual determinations.

If the offer of an end product from a qualifying country source listed in 225.872-1(b), as evaluated, is low or otherwise eligible for award, prepare a determination and findings exempting the acquisition from the Buy American Act and the Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies. Follow the procedures at PGI 225.872-4.

19. Section 225.872-5 is amended by revising paragraphs (b) and (c) and by removing paragraph (d). The revised text reads as follows:

225.872-5 Contract administration.

* * * * *

(b) Follow the contract administration procedures at PGI 225.872-5(b).

(c) Information on quality assurance delegations to foreign governments is in subpart 246.4, Government Contract Quality Assurance.

20. Section 225.872-6 is amended by revising paragraph (c) to read as follows:

225.872-6 Audit.

* * * * *

(c) Handle requests for audits in qualifying countries in accordance with 215.404-2(c), but follow the additional procedures at PGI 225.872-6(c).

21. Section 225.873-2 is revised to read as follows:

225.873-2 Procedures.

When an offeror or a contractor identifies a levy included in an offered or contract price, follow the procedures at PGI 225.873-2.

22. Sections 225.902 and 225.903 are revised to read as follows:

225.902 Procedures.

Follow the entry and release procedures at PGI 225.902.

225.903 Exempted supplies.

(b)(i) For an explanation of the term "supplies," see PGI 225.903(b)(i).

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of, or attached to, Customs Form 7501. A duly designated officer or civilian official of the appropriate department or agency shall execute the certificate in the format provided at PGI 225.903(a)(ii).

23. Section 225.7003 is amended in paragraph (a) by revising the introductory text to read as follows:

225.7003 Waiver of restrictions of 10 U.S.C. 2534.

(a) The waiver procedures of this section apply only if specifically authorized by reference elsewhere in this subpart. The restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

* * * * *

24. Sections 225.7301 and 225.7302 are revised to read as follows:

225.7301 General.

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through FMS agreements. The agreement is documented in a Letter of Offer and Acceptance (LOA) (see DoD 5105.38-M, Security Assistance Management Manual).

(b) Conduct FMS acquisitions under the same acquisition and contract

management procedures used for other defense acquisitions.

(c) Follow the additional procedures at PGI 225.7301(c) for preparation of solicitations and contracts that include FMS requirements.

225.7302 Guidance.

For guidance on the role of the contracting officer in FMS programs that will require an acquisition, see PGI 225.7302.

25. Section 225.7303-2 is amended in paragraph (a)(3) by revising the introductory text to read as follows:

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(3) Offset costs (also see 225.7307).

* * * * *

225.7303-4 [Amended]

26. Section 225.7303-4 is amended in paragraph (b)(1) by revising the last parenthetical to read "(see 225.7307(a))".

225.7306 [Removed]

27. Section 225.7306 is removed.

225.7307 and 225.7308 [Redesignated]

28. Sections 225.7307 and 225.7308 are redesignated as sections 225.7306 and 225.7307, respectively.

29. Newly designated section 225.7306 is revised to read as follows:

225.7306 Offset arrangements.

In accordance with the Presidential policy statement of April 16, 1990, DoD does not encourage, enter into, or commit U.S. firms to FMS offset arrangements. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved. (Also see 225.7303-2(a)(3)).

30. Section 225.7501 is amended by revising paragraph (a)(2)(iii) to read as follows:

225.7501 Policy.

* * * * *

(a) * * *

(2) * * *

(iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier;

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7027 and 252.225–7028 [Amended]

31. Sections 252.225–7027 and 252.225–7028 are amended in the introductory text by removing “225.7308” and adding in its place “225.7307”.

[FR Doc. 05–5625 Filed 3–22–05; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2004–D034]

Defense Federal Acquisition Regulation Supplement; Restrictions on Totally Enclosed Lifeboat Survival Systems

AGENCY: 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 remove text addressing restrictions on the acquisition of totally enclosed lifeboat survival systems. The text proposed for removal is based on fiscal year 1994 and 1995 appropriations act provisions that are no longer considered applicable, or is based on statutory provisions that apply only to the Navy.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 23, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D034, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2004–D034 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule removes DFARS 225.7008, Restrictions on totally enclosed lifeboat survival systems, and the corresponding contract clause at DFARS 252.225–7039. These restrictions implement Section 8124 of the Fiscal Year 1994 DoD Appropriations Act (Public Law 103–139), Section 8093 of the Fiscal Year 1995 DoD Appropriations Act (Public Law 103–335), and 10 U.S.C. 2534. Both appropriations act provisions state that none of the funds appropriated in “this or any other Act” could be used for the purchase of a totally enclosed lifeboat and associated davits and winches, if less than 50 percent of the entire system’s components are manufactured in the United States, and if less than 50 percent of the labor in the manufacture and assembly of the entire system is performed in the United States.

There is a presumption that any provision in an annual appropriations act is effective only for that fiscal year, unless permanency is clearly indicated by words of futurity, or the provision is of a general nature, bearing no relation to the object of the appropriations. At the time of implementation of the restrictions on acquisition of totally enclosed lifeboat systems in the DFARS, DoD interpreted the phrase “this or any other Act” to impart futurity to the restrictions on acquisition of totally enclosed lifeboat systems. DoD has reevaluated this interpretation and has determined that the appropriations act provisions upon which the DFARS coverage is based were not permanent legislation. This position is supported by review of case law, including a U.S. Comptroller General decision of September 16, 1987, B–228838, in which the General Accounting Office held that language such as “this or any other Act” does not indicate futurity.

10 U.S.C. 2534(a) restricts the acquisition of totally enclosed lifeboats that are components of naval vessels. Since this restriction impacts only the Navy, and 10 U.S.C. 2534(h) specifies that DoD may not use contract clauses or certifications, but must use management and oversight techniques, to implement this restriction, DFARS coverage for implementation of this restriction is considered unnecessary.

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 does not expect this 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 domestic source restrictions of 10 U.S.C. 2534 still apply to the acquisition of totally enclosed lifeboats that are components of naval vessels. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D034.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain 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 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 225 and 252 as follows:

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

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

PART 225—FOREIGN ACQUISITION

§§ 225.7008 through 225.7008–4 [Removed and Reserved]

2. Sections 225.7008 through 225.7008–4 are removed and reserved.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

§ 252.225–7039 [Removed and Reserved]

3. Section 252.225–7039 is removed and reserved.

[FR Doc. 05–5632 Filed 3–22–05; 8:45 am]

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