

Director” and adding in its place “National Security Agency—The Senior Acquisition Executive”.

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DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 2004–D029]

Defense Federal Acquisition Regulation Supplement; Extension of Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 843 of the National Defense Authorization Act for Fiscal Year 2005. Section 843 provides for a 5-year extension of the DoD test program for negotiation of comprehensive small business subcontracting plans.

DATES: Effective March 23, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350. Please cite DFARS Case 2004–D029.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 219.702 to implement Section 843 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 843 amends Section 834(e) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Pub. L. 101–189; 15 U.S.C. 637 note) to extend the termination date of the DoD test program for negotiation of comprehensive small business subcontracting plans, from September 30, 2005, to September 30, 2010. The test program permits participating DoD contractors to negotiate comprehensive small business subcontracting plans on a plant, division, or company-wide basis.

This rule also updates a statutory reference at DFARS 219.702(a), and updates the heading of DFARS Subpart 219.7 for consistency with the heading of FAR Subpart 19.7.

This rule was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2004–D029.

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 Part 219

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 219 is amended as follows:

■ 1. The authority citation for 48 CFR part 219 continues to read as follows:

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

PART 219—SMALL BUSINESS PROGRAMS

Subpart 219.7 [Amended]

■ 2. Subpart 219.7 is amended by revising the subpart heading to read “Subpart 219.7—The Small Business Subcontracting Program”.

219.702 [Amended]

■ 3. Section 219.702 is amended as follows:

■ a. In paragraph (a), in the introductory text, by adding after “as amended” the parenthetical “(15 U.S.C. 637 note)”; and

■ b. In paragraph (a)(i)(A)(1), by removing “2005” and adding in its place “2010”.

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DEPARTMENT OF DEFENSE

48 CFR Parts 234, 242, and 252

[DFARS Case 2003–D030]

Defense Federal Acquisition Regulation Supplement; Major Systems Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to major systems acquisition, earned value management systems, and cost/schedule status reporting. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: *Effective Date:* March 23, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350. Please cite DFARS Case 2003–D030.

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 final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

- Deletion of the definitions of “systems” and “systems acquisition” at DFARS 234.001, since these terms are not used within DFARS part 234.

- Relocation of text on earned value management systems from DFARS part 234 to part 242, since earned value management system requirements are not limited to major systems acquisition. The earned value management system thresholds

specified in DoDI 5000.2, Operation of the Defense Acquisition System, do not cleanly equate to major or other than major systems. The prescriptions for the Cost/Schedule Status Report clause and provision at DFARS 252.242-7005 and 252.242-7006, respectively, also are amended to remove text that limits their use to other than major systems.

- Deletion of text at DFARS 234.005-70 regarding a requirement for the procuring contracting officer to obtain assistance from the administrative contracting officer when determining the adequacy of a proposed earned value management system plan. Text on this subject has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

- Updating of references to OMB Circulars and the DoD 5000 series documents.

DoD published a proposed rule at 69 FR 8155 on February 23, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 certifies that this final rule will not 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 updates and relocates existing DFARS text, with no significant change in policy.

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 234, 242, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 234, 242, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 234, 242, and 252 continues to read as follows:

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

PART 234—MAJOR SYSTEM ACQUISITION

234.001 [Removed]

■ 2. Section 234.001 is removed.

■ 3. Section 234.003 is revised to read as follows:

234.003 Responsibilities.

DoDD 5000.1, The Defense Acquisition System, and DoDI 5000.2, Operation of the Defense Acquisition System, contain the DoD implementation of OMB Circular A-109 and OMB Circular A-11.

■ 4. Section 234.005 is revised to read as follows:

234.005 General requirements.

See 242.1106(a) for information on the use of earned value management systems and the use of cost/schedule status reports.

234.005-70 and 234.005-71 [Removed]

■ 5. Sections 234.005-70 and 234.005-71 are removed.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 6. Section 242.1106 is amended by revising paragraph (a) to read as follows:

242.1106 Reporting requirements.

(a) See DoDI 5000.2, Operation of the Defense Acquisition System, for reporting requirements for defense technology projects and acquisition programs. Table E3.T2. of DoDI 5000.2 specifies the earned value management system (EVMS) thresholds. When an offeror proposes an EVMS plan, follow the review procedures at PGI 242.1106(a). The Defense Acquisition Guidebook provides additional guidance on earned value management and identifies when cost/schedule status reports are applicable.

* * * * *

■ 7. Section 242.1107-70 is revised to read as follows:

242.1107-70 Solicitation provisions and contract clauses.

(a) When the Government requires contractor compliance with DoD earned value management system criteria—

(1) Use the provision at 252.242-7001, Notice of Earned Value Management System, in solicitations; and

(2) Use the clause at 252.242-7002, Earned Value Management System, in solicitations and contracts.

(b) Use the clause at 252.242-7005, Cost/Schedule Status Report, in solicitations and contracts that require cost/schedule status reports (*i.e.*, when

the Contract Data Requirements List includes DI-MGMT-81467).

(c) Use the provision at 252.242-7006, Cost/Schedule Status Report Plans, in solicitations that require cost/schedule status reports.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.234-7000 and 252.234-7001 [Removed]

■ 8. Sections 252.234-7000 and 252.234-7001 are removed.

■ 9. Sections 252.242-7001 and 252.242-7002 are added to read as follows:

252.242-7001 Notice of Earned Value Management System.

As prescribed in 242.1107-70(a)(1), use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (MAR 2005)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer has recognized that the proposed earned value management system (EVMS) complies with the EVMS criteria of DoDI 5000.2, Operation of the Defense Acquisition System, or that the proposed cost/schedule control system has been accepted by the Department of Defense.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS criteria.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(iii) Describe the management system and its application in terms of the 32 EVMS criteria;

(iv) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the criteria. The prime contractor and the Government shall agree to subcontractors selected for application of the EVMS criteria.

(End of provision)

252.242-7002 Earned Value Management System.

As prescribed in 242.1107-70(a)(2), use the following clause:

EARNED VALUE MANAGEMENT SYSTEM (MAR 2005)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in DoDI 5000.2, Operation of the Defense Acquisition System.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO as complying with EVMS criteria (or the Contractor does not have an existing cost/schedule control system that has been accepted by the Department of Defense), the Contractor shall apply the system to the contract and shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor-proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the following subcontractors to comply with the requirements of this clause:

(Contracting Officer to insert names of subcontractors selected for application of EVMS criteria in accordance with 252.242-7001(c).)

(End of clause)

■ 10. Section 252.242-7005 is amended by revising the introductory text, the clause date, and paragraph (c) to read as follows:

252.242-7005 Cost/Schedule Status Report.

As prescribed in 242.1107-70(b), use the following clause:

COST/SCHEDULE STATUS REPORT (MAR 2005)

* * * * *

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the earned value management system criteria provided in DoDI 5000.2, Operation of the Defense Acquisition System.

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■ 11. Section 252.242-7006 is amended by revising the introductory text, the clause date, and paragraph (b) to read as follows:

252.242-7006 Cost/Schedule Status Report Plans.

As prescribed in 242.1107-70(c), use the following provision:

COST/SCHEDULE STATUS REPORT PLANS (MAR 2005)

* * * * *

(b) If the offeror proposes to use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer as complying with the earned value management system criteria of DoDI 5000.2, Operation of the Defense Acquisition System, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision.
(End of provision)

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DEPARTMENT OF DEFENSE**48 CFR Part 237**

[DFARS Case 2004-D032]

Defense Federal Acquisition Regulation Supplement; Contractor Performance of Security-Guard Functions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 324 of the National Defense Authorization Act for Fiscal Year 2005. Section 324 conditionally extends the expiration date of DoD's authority to enter into contracts for the performance of security-guard functions at military installations or facilities to meet the increased need for such functions since September 11, 2001.

DATES: Effective March 23, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2004-D032.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends DFARS 237.102-70 to implement Section 324 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Section 324 amends Section 332 of Public Law 107-314 to extend DoD's authority to enter into contracts for security-guard functions at military installations or facilities, provided DoD submits a report to Congress by December 1, 2005, that addresses DoD's use of this authority and includes a plan for meeting security-guard requirements on a long-term basis in a manner consistent with applicable law.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2004-D032.

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 Part 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 237 is amended as follows:

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

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