

## D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 824 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 824 amended the DoD pilot program that permits the use of streamlined procedures in the award of contracts and subcontracts that follow other transaction agreements, to include items developed under research projects within the scope of the program. The pilot program is intended to ease the transition of nontraditional defense contractors from the use of other transaction agreements to standard contracts. Comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Part 212

Government procurement.

**Michele P. Peterson,**

*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. 421 and 48 CFR Chapter 1.

■ 2. Section 212.7002-1 is amended by revising paragraphs (a)(2) and (4) to read as follows:

#### 212.7002-1 Contracts under the program.

(a) \* \* \*

(2) Is a follow-on contract for the production of an item or process begun as a prototype project under an other transaction agreement or as a research project carried out in accordance with 10 U.S.C. 2371;

\* \* \* \* \*

(4) Is awarded on or before September 30, 2010; and

\* \* \* \* \*

■ 3. Section 212.7002-2 is amended by revising paragraphs (a)(1) and (3) to read as follows:

#### 212.7002-2 Subcontracts under the program.

(a) \* \* \*

(1) Is for the production of an item or process begun as a prototype project under an other transaction agreement or

as a research project carried out in accordance with 10 U.S.C. 2371;

\* \* \* \* \*

(3) Is awarded on or before September 30, 2010;

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 216

RIN 0750-AG14

### Defense Federal Acquisition Regulation Supplement; Delegation of Authority for Single Award Task or Delivery Order Contracts (DFARS Case 2008-D017)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address Federal Acquisition Regulation provisions that permit the award of a single source task or delivery order contract exceeding \$100 million, if the head of the agency determines it is necessary in the public interest. The DFARS rule specifies that the authority to make such a determination may not be delegated below the level of the senior procurement executive.

**DATES:** *Effective Date:* January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2008-D017.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

An interim rule amending the Federal Acquisition Regulation (FAR) was published at 73 FR 54008 on September 17, 2008, to implement Section 843 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 843 prohibits the award of a task or delivery order contract in an amount exceeding \$100 million to a single source unless the head of the agency determines that: the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably

perform the work; the contract provides only for firm-fixed-price task or delivery orders; only one source is qualified and capable of performing the work at a reasonable price to the Government; or it is necessary in the public interest to award the contract to a single source due to exceptional circumstances. With regard to the delegation of authority provision at FAR 1.108(b), this DFARS rule specifies that the head of the agency may not delegate the authority to make a single source public interest determination below the level of the senior procurement executive. The rule also requires that a copy of any determination authorizing the award of a single source task or delivery order contract be submitted to the Deputy Director, Defense Procurement (Contract Policy and International Contracting).

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 under 41 U.S.C. 418b 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 2008-D017.

##### 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 216

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 216 is amended as follows:

### PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 216 continues to read as follows:

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

■ 2. Section 216.504 is added to read as follows:

#### 216.504 Indefinite-quantity contracts.

(c)(1)(ii)(D) *Limitation on single award contracts.*

(1) The authority to make the determination authorized in FAR 16.504(c)(1)(ii)(D)(1)(iv) shall not be delegated below the level of the senior procurement executive.

(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.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 225, 236, and 252

RIN 0750–AG16

#### Defense Federal Acquisition Regulation Supplement; Steel for Military Construction Projects (DFARS Case 2008–D038)

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 108 of the Military Construction and Veterans Affairs Appropriations Act, 2009. Section 108 requires that American steel producers, fabricators, and manufacturers be given the opportunity to compete for contracts and subcontracts for the acquisition of steel for use in military construction projects or activities.

**DATES:** *Effective date:* January 15, 2009.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 16, 2009, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2008–D038, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2008–D038 in the subject line of the message.

- *Fax:* 703–602–7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy

Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

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

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

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

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 108 of the Military Construction and Veterans Affairs Appropriations Act, 2009 (Pub. L. 110–329, Division E) prohibits the use of funds appropriated in Title I of that Act for the procurement of steel for any military construction project or activity for which American steel producers, fabricators, or manufacturers have been denied the opportunity to compete. This interim rule adds DFARS policy and a contract clause to implement the statutory prohibition.

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 has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This interim rule implements Section 108 of the Military Construction and Veterans Affairs Appropriations Act, 2009. The objective of the rule is to ensure that American steel producers, fabricators, and manufacturers are given the opportunity to compete for contracts and subcontracts for the acquisition of steel for use in military construction projects and activities. Existing Buy American Act and Balance of Payments Program requirements, implemented in FAR Subpart 25.2 and DFARS Subpart 225.75 respectively, already provide for DoD acquisition of domestic construction materials, including steel. However, this DFARS rule will prohibit use of the exceptions to Buy American Act/Balance of Program requirements otherwise permitted by FAR/DFARS, with regard to the acquisition of steel, unless American steel producers, fabricators, and manufacturers are first provided the opportunity to compete. The rule is expected to benefit American steel producers, fabricators, and manufacturers by ensuring they are

provided an opportunity to compete for contracts and subcontracts for the acquisition of steel for use in military construction projects and activities.

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 2008–D038.

##### 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.*

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

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 108 of the Military Construction and Veterans Affairs Appropriations Act, 2009 (Pub. L. 110–329, Division E). Section 108 establishes a prohibition on the expenditure of funds for the procurement of steel for any military construction project or activity, unless American steel producers, fabricators, and manufacturers have been provided an opportunity to compete. Comments received in response to this interim rule will be considered in the formation of the final rule.

##### List of Subjects in 48 CFR Parts 225, 236, and 252

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 225, 236, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225, 236, and 252 continues to read as follows:

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

##### PART 225—FOREIGN ACQUISITION

■ 2. Section 225.7014 is revised to read as follows:

##### 225.7014 Restrictions on military construction.

(a) For restriction on award of military construction contracts to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in