

(b) Be a firm-fixed-price contract, or a fixed-price contract with an economic price adjustment clause;

(c) Be in an amount not in excess of \$50 million;

(d) Provide—

(1) For the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and

(2) That failure to make delivery as provided for under paragraph (d)(1) may result in termination for cause; and

(e) Be—

(1) Exempt from the requirement to submit certified cost or pricing data;

(2) Exempt from the cost accounting standards under section 26 of the Office of Procurement Policy Act (41 U.S.C. 1502); and

(3) Subject to the requirement to provide data other than certified cost or pricing data for the purpose of price reasonableness determinations.

212.7102-2 Reporting requirements.

Departments and agencies shall prepare a consolidated annual report to provide information about contracts awarded under this pilot authority. The report shall be submitted to the Office of the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), by October 31 each year in accordance with the procedures at PGI 212.7102. See PGI 212.7102 for annual reporting format.

212.7102-3 Sunset of the pilot authority.

(a) The authority to carry out the pilot program described in this subpart expires on January 6, 2016.

(b) The expiration under paragraph (a) of this section of the authority to carry out the pilot program will not affect the validity of any contract awarded under the pilot program before the expiration of the pilot program under that paragraph.

212.7103 Solicitation provision.

Use the provision at 252.212-7002, Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items, in all solicitations that meet the applicability criteria of 212.7102-1 for this pilot program.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend part 252 by adding new section 252.212-7002 to read as follows:

252.212-7002 Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items.

As prescribed in 212.7103, use the following provision:

PILOT PROGRAM FOR ACQUISITION OF MILITARY-PURPOSE NONDEVELOPMENTAL ITEMS (JUN 2011)

(a) *Definitions.* As used in this provision—
Military-purpose nondevelopmental item means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. An item shall not be considered to be developed at private expense if development of the item was paid for in whole or in part through—

(1) Independent research and development costs or bid and proposal costs, per the definition in FAR 31.205-18, that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

(2) Foreign government funding.
“Nondevelopmental item” is defined in FAR 2.101 and for the purpose of this subpart also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement of DFARS 212.7102-2(d)(1).

Nontraditional defense contractor means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any of the following for the Department of Defense—

(1) Any contract or subcontract that is subject to full coverage under the cost accounting standards prescribed pursuant to Section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. section 1502) and the regulations implementing such section; or

(2) Any other contract in excess of the certified cost or pricing data threshold under which the contractor is required to submit certified cost or pricing data.

(b) *Notice.* This is a procurement action under section 866 of the National Defense Authorization Act for Fiscal Year 2011, Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items, and is subject to the limitations outlined in DFARS 212.7102.

(c) *Representation.* By submission of its offer, the offeror represents that it is a nontraditional defense contractor.

(End of provision)

* * * * *

[FR Doc. 2011-16316 Filed 6-28-11; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

RIN 0750-AH30

Defense Federal Acquisition Regulation Supplement; Management of Manufacturing Risk in Major Defense Acquisition Programs (DFARS Case 2011-D031)

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

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule to implement section 812 of the National Defense Authorization Act for Fiscal Year 2011. Section 812(b)(5) instructs DoD to issue guidance that, at a minimum, shall require appropriate consideration of the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

DATES: Effective June 29, 2011.

Comments on the interim rule should be submitted in writing to the address shown below on or before August 29, 2011 to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011-D031, using any of the following methods:

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

Submit comments via the Federal eRulemaking portal by inputting “DFARS Case 2011-D031” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2011-D031.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2011-D031” on your attached document.

○ *E-mail:* dfars@osd.mil. Include DFARS Case 2011-D031 in the subject line of the message.

○ *Fax:* 703-602-0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Dustin Pitsch, 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 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: Mr. Dustin Pitsch, telephone 703 602-0289.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 215.3, Source Selection. It amends DFARS 215.304(c) by adding paragraph (iv) to state that the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors shall be considered as a part of the source selection process for major defense acquisition programs.

II. Executive Orders 12866 and 13563

Executive Orders 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 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

DoD has performed an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The interim rule will apply to DoD Major Defense Acquisition Program contractors and subcontractors. As such, it is not expected that this rule will have a significant impact on a significant number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows.

This interim rule amends the DFARS to implement section 812 of the National Defense Authorization Act for FY 2011 (Pub. L. 111-383) (10 U.S.C. 2430 note). Section 812(b)(5) requires appropriate consideration of the manufacturing readiness and manufacturing readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

The rule will apply to DoD Major Defense Acquisition Program contractors and subcontractors. Most major defense acquisition programs are awarded to large concerns as they are of a scope too large for any small business to perform. As such, it is not expected that this rule will have a significant impact on a significant number of small entities.

The interim rule imposes no reporting, recordkeeping, or other information collection requirements. The proposed rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule that would meet the requirements of the statute.

DoD invites comments from small businesses 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. 601. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011-D031) in correspondence.

IV. Paperwork Reduction Act

The rule does not impose 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).

V. 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 812 of the National Defense Authorization Act for Fiscal Year 2011, enacted on January 7, 2011. Section 812 requires implementation within 180 days, by July 6, 2011, and an interim rule is required to meet the implementation date. This action is necessary in order to require contracting officers to consider the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs. 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 215

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 215 is amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

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

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

■ 2. Amend section 215.304 by adding paragraph (c)(iv) to read as follows:

215.304 Evaluation factors and significant subfactors.

(c) * * *

(iv) In accordance with section 812 of the National Defense Authorization Act for Fiscal Year 2011, consider the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750-AG93

Defense Federal Acquisition Regulation Supplement; Definition of Sexual Assault (DFARS Case 2010-D023)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to the Defense Federal Acquisition Regulation Supplement (DFARS) to ensure contractor employees accompanying U.S. Armed Forces are made aware of the DoD definition of sexual assault as defined in DoD Directive 6495.01, Sexual Assault Prevention and Response Program, and that many of the offenses addressed in the definition are covered under the Uniform Code of Military Justice. Further, sexual assault offenses in the definition, which are not covered by the Uniform Code of Military Justice, may nevertheless have consequences to contractor employees under DFARS