

structures for use by the Armed Forces, the contracting officer shall award contracts that provide the best value. Temporary structures covered by this paragraph are nonpermanent buildings, including tactical shelters, nonpermanent modular or pre-fabricated buildings, or portable or relocatable buildings, such as trailers or equipment configured for occupancy (see also 246.270-2). Determination of best value includes consideration of the total life-cycle costs of such tents or structures, including the costs associated with any equipment, fuel, or electricity needed to heat, cool, or light such tents or structures (see FAR 7.105(a)(3)(i) and PGI 207.105(a)(3)(i)).

(b) The requirements of this section apply to any agency or department that acquires tents or other temporary structures on behalf of DoD (see FAR 17.503(d)(2)).

**PART 225—FOREIGN ACQUISITION**

■ 3. Section 225.7002-1 is amended by revising paragraph (a)(3) to read as follows:

**225.7002-1 Restrictions.**

- (a) \* \* \*
  - (3)(i) Tents and the structural components of tents;
  - (ii) Tarpaulins; or
  - (iii) Covers.
- \* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.212-7001 [Amended]**

■ 4. Section 252.212-7001 is amended by removing the clause date “(DEC 2012)” and adding “(FEB 2013)” in its place, and in paragraph (b)(9) removing “(DEC 2012)” and adding “(FEB 2013)” in its place.

■ 5. Section 252.225-7012 is amended by removing the clause date “(DEC 2012)” and adding “(FEB 2013)” in its place, and by revising paragraph (b)(3) to read as follows:

**252.225-7012 Preference for certain domestic commodities.**

- \* \* \* \* \*
  - (b) \* \* \*
  - (3)(i) Tents and structural components of tents;
  - (ii) Tarpaulins; or
  - (iii) Covers.
- \* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 219 and 252**

[DFARS Case 2009-D002]

RIN 0750-AG40

**Defense Federal Acquisition Regulation Supplement; Electronic Subcontracting Reporting System**

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

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, with changes, an interim rule, amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to the FAR regarding policy and procedures related to the Electronic Subcontracting Reporting System.

**DATES:** *Effective* February 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** Lee Renna, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6095.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published an interim rule in the **Federal Register** at 75 FR 65439 on October 25, 2010, to amend section 219.708, clauses 252.212-7001, 252.219-7003, and 252.219-7004, and sections I-105 and I-112 of Appendix I, to provide DoD-specific procedures and policies related to the Electronic Subcontracting Reporting System (eSRS). There were no comments received in response to the interim rule. Accordingly, the interim rule amending 48 CFR parts 219, 252, and Appendix I, is adopted as a final rule with only minor technical changes at 219.708.

**II. Executive Order 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. The Office of Information and Regulatory Affairs has determined that 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**

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 small businesses are not required to have subcontracting plans and, therefore, are not required to use eSRS to submit reports on their progress in achieving the goals in those plans.

**IV. Paperwork Reduction Act.**

This final rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 35). This rule provides DoD instructions on how to submit reports that are already required by the FAR and are covered under Office of Management and Budget Clearance Numbers 9000-0006, Subcontracting Plans/Individual subcontract Report (SF 294) and 9000-0007, Summary Contract Report.

**List of Subjects in 48 CFR Parts 219 and 252**

Government procurement.

**Kortnee Stewart,**

*Editor, Defense Acquisition Regulations System.*

Accordingly, the interim rule amending 48 CFR parts 219 and 252, which was published in the **Federal Register** at 75 FR 65439 on October 25, 2010, is adopted a final with the following changes:

**PART 219—SMALL BUSINESS PROGRAMS**

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

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

■ 2. Section 219.708 is amended by revising paragraph (b)(1) to read as follows:

**219.708 Contract clauses.**

(b)(1)(A) Except as provided in paragraph (b)(1)(B) of this section, use the clause at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts)—

(1) In solicitations and contracts that contain the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(2) With its Alternate I in contracts that use Alternate III of 52.219-9, Small

Business Subcontracting Plan. (B)(1) In prime contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702, use the clause at 252.219-7004, Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219-9, Small Business Subcontracting Plan.

(2) However, also include in the prime contract, solely for the purpose of flowing the clauses down to subcontractors—

(i) FAR clause 52.219-9, Small Business Subcontracting Plan, and 252.219-7003; or

(ii) When the contract will not be reported in FPDS (see FAR 4.606 (c)(5)), FAR clause 52.219-9, Small Business Subcontracting Plan with its Alternate III and 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) with its Alternate I.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

[DFARS Case 2012-D006]

RIN 0750-AH57

#### Defense Federal Acquisition Regulation Supplement: Alleged Crimes By or Against Contractor Personnel

**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 implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 and expand coverage on contractor requirements and responsibilities relating to alleged crimes by or against contractor personnel.

**DATES:** Effective February 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, telephone 571-372-6098.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published a proposed rule in the *Federal Register* at 77 FR 14490 on

March 12, 2012, to revise paragraph (d) of the clause at DFARS 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, to require contractors to provide information to their employees on how and where to report alleged crimes and where to seek assistance or whistleblower protection. These requirements apply to all DoD contracts that authorize contractor personnel to accompany U.S. Armed Forces deployed outside the United States in contingency operations, humanitarian or peacekeeping operations, or other military operations when the latter are designated by the combatant commander. Section 854 of the NDAA for FY 2009 (Pub. L. 110-417) applied this requirement just to contracts performed in Iraq and Afghanistan. Four respondents submitted public comments in response to the proposed rule.

##### II. Discussion and Analysis of the Public Comments

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

###### A. Summary of Changes From the Proposed Rule

The Defense Criminal Investigative Service was added to the list at paragraph (d)(6) of the clause, and the title for the U.S. Army Criminal Investigation Command was corrected. In addition, the explanation of the impact of the changes was clarified in Section I, Background, of this notice.

###### B. Analysis of Public Comments

1. Add the Defense Criminal Investigative Service to the List of Appropriate Investigative Agencies

*Comment:* One respondent requested the addition of the Defense Criminal Investigative Service (DCIS) to the list of appropriate criminal investigative agencies to which suspected crimes should be reported. DCIS is the criminal investigative arm of the DoD Office of the Inspector General, and it also investigates alleged crimes involving contractor personnel.

*Response:* The requested change has been made.

2. Update the Information on the U.S. Army Criminal Investigation Command

*Comment:* One respondent stated that the U.S. Army's criminal investigative unit was established as a major command on September 17, 1971, and

renamed the "U.S. Army Criminal Investigation Command."

*Response:* The requested change has been made.

3. Clarify the Impact of the Change on Applicability of These Requirements

*Comment:* A respondent stated that the explanation of the proposed change and its impact in the proposed rule (77 FR 14490) were not clear and implied that the applicability of the clause at DFARS 252.225-7040 was proposed for revision, without, however, actually amending the clause prescription.

*Response:* The "Background" section of the proposed rule could have been interpreted more than one way. However, the preamble to this final rule makes clear that there is no change to the applicability of DFARS clause 252.225-7040.

4. Consider Imposing a Range of Penalties in the Event of Noncompliance

*Comment:* A respondent expressed support for "these relatively modest requirements on contractors." In addition, the respondent suggested that, to strengthen accountability, DoD should consider imposing a range of penalties in the event of noncompliance, "much like non-compliance with the trafficking in persons provision in the Federal Acquisition Regulation (FAR) subjects contractors to the following remedies:

- (1) Requiring the contractor to remove a contractor employee or employees from the performance of the contract;
- (2) Requiring the contractor to terminate a subcontract;
- (3) Suspension of contract payments;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the government determined contractor non-compliance;
- (5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (6) Suspension or debarment."

The respondent cited FAR 52.222-50(e) as the source for the above list.

*Response:* Most or all of the remedies that are cited by the respondent are already available to the Government in the event of noncompliance by a contractor with the requirements of a clause that is included in its contract. It is not necessary to cite them in each individual contract clause to which they may be applied.

##### 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