

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 11. Amend section 252.204–7007 by—
 - a. Removing the clause date “(AUG 2014)” and adding “(DEC 2014)” in its place;
 - b. Removing paragraph (d)(1)(i);
 - c. Redesignating paragraphs (d)(1)(ii) through (v) as (d)(1)(i) through (iv); and
 - d. Adding a new paragraph (d)(1)(v).
- The addition reads as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

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(d)(1) * * *

(v) 252.225–7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. Applies to all solicitations expected to result in contracts of \$150,000 or more.

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252.209–7001 [Removed and Reserved]

- 12. Remove and reserve section 252.209–7001.

252.209–7002 [Amended]

- 13. Amend section 252.209–7002 introductory text by removing “209.104–70(b)” and adding “209.104–70” in its place.
- 14. Revise section 252.209–7004 to read as follows:

252.209–7004 Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism.

As prescribed in 209.409, use the following clause:

SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (DEC 2014)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$30,000 with a firm, or a subsidiary of a firm, that is identified in the Exclusions section of the System for Award Management System (SAM Exclusions) as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, in SAM Exclusions, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism. The notice must

include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in SAM Exclusions.

(End of clause)

- 15. Add section 252.225–7050 to read as follows:

252.225–7050 Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

As prescribed in 225.771–5, use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (DEC 2014)

(a) *Definitions.* As used in this provision—
Government of a country that is a state sponsor of terrorism includes the state and the government of a country that is a state sponsor of terrorism, as well as any political subdivision, agency, or instrumentality thereof.

Significant interest means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in “nominee shares,” “street names,” or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

State sponsor of terrorism means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include: Cuba, Iran, Sudan, and Syria.

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2327, unless a waiver is granted by the Secretary of Defense, no contract may be awarded to a firm if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in—

(1) The firm;

(2) A subsidiary of the firm; or

(3) Any other firm that owns or controls the firm.

(c) *Representation.* Unless the Offeror submits with its offer the disclosure required in paragraph (d) of this provision, the Offeror represents, by submission of its offer, that the government of a country that is a state sponsor of terrorism does not own or control a significant interest in—

(1) The Offeror;

(2) A subsidiary of the Offeror; or

(3) Any other firm that owns or controls the Offeror.

(d) *Disclosure.* (1) The Offeror shall disclose in an attachment to its offer if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in the Offeror; a subsidiary of the Offeror; or any other firm that owns or controls the Offeror.

(2) The disclosure shall include—

(i) Identification of each government holding a significant interest; and

(ii) A description of the significant interest held by each government.

(End of provision)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 225, and 252

RIN 0750–AI32

Defense Federal Acquisition Regulation Supplement: Foreign Commercial Satellite Services (DFARS Case 2014–D010)

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

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with minor editorial changes, an interim rule that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 that prohibits acquisition of commercial satellite services from certain foreign entities.

DATES: Effective December 11, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the *Federal Register* at 79 FR 45662 on August 5, 2014, to implement section 1602 of the NDAA for FY 2014 (Pub. L. 113–66). Section 1602 prohibits award of a contract for commercial satellite services to a foreign entity if the Secretary of Defense reasonably believes that the foreign entity—

- Is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; or

- Plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country.

A covered foreign country means the People's Republic of China, North Korea, or any country that is a state sponsor of terrorism, as described in section 1261(c)(2) of the NDAA for FY 2013 (Pub. L. 112–239). State sponsors of terrorism, as determined by the Secretary of State, currently include Cuba, Iran, Sudan, and Syria.

No public comments were received in response to the proposed rule.

II. Discussion and Analysis

This rule converts the interim rule, with only minor editorial changes, to a final rule.

III. Applicability to Acquisitions Not Greater Than the Simplified Acquisition Threshold (SAT) and Commercial Items

10 U.S.C. 2279 is silent on applicability to contracts and subcontracts in amounts not greater than the SAT or for the acquisition of commercial items. Also, the statute does not provide for criminal or civil penalties. Therefore, it does not apply to the acquisition of contracts and subcontracts in amounts not greater than the SAT or the acquisition of commercial items unless the Director, DPAP, makes a written determination as provided in 41 U.S.C. 1905.

There is a potential risk to national security if DoD uses commercial satellite services for DoD communications and the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations, regardless of the dollar value of the contract or order. Likewise, if launch or other satellite services under the contract are occurring in a covered country, the government of that country could impact the ability of the foreign entity to adequately provide those services. Furthermore, although 10 U.S.C. 2279 does not specifically reference 41 U.S.C. 1906, the statute only applies to the acquisition of commercial satellite services, so exempting commercial items from application of the statute would negate the intended effect of the statute. Therefore, consistent with 41 U.S.C. 1905 and 1906, the Director, Defense Procurement and Acquisition Policy, determined that it would not be in the best interest of the United States to exempt acquisitions not greater than the SAT and acquisitions of commercial items from the applicability of 10 U.S.C. 2279.

IV. 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 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. 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.

V. Regulatory Flexibility Act

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.* However, a final regulatory flexibility analysis has been performed and is summarized as follows:

DoD is converting to a final rule, without change, an interim rule that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1602 of the National Defense Authorization Act (NDAA) for FY 2014. Section 1602 added 10 U.S.C. 2279, which prohibits acquisition of commercial satellite services from certain foreign entities. The objective of the rule is to implement 10 U.S.C. 2279, which is the legal basis for the rule. The statute prohibits award of contracts for commercial satellite services to a foreign entity that—

- Is an entity in which the government of a covered foreign country (*i.e.*, the People's Republic of China, North Korea, Cuba, Iran, Sudan, or Syria) has an ownership interest that enables the government to affect satellite operations; or
- Plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country.

There were no public comments in response to the initial regulatory flexibility analysis.

DoD estimates that this rule will apply to less than 111 small entities. According to Federal Procurement Data System data for FY 2013, 111 small entities were awarded contracts or orders for services in PSC D304 (ADP Telecommunications and Transmission

Services), of which commercial satellite services are a subset. Although the focus of the Regulatory Flexibility Act is protection of domestic small business entities that are eligible for assistance from the Small Business

Administration, there may be domestic small business entities in the United States that offer the satellite services of a foreign entity that would be restricted by this rule.

This rule requires an annual representation as to whether the offeror is, or is not, a foreign entity subject to the prohibitions of the statute or is, or is not, offering commercial satellite services provided by such a foreign entity. Further information is required if the offeror provides an affirmative response to any of the representations, but such affirmative response and further submission is expected to be extremely rare.

This rule will not have a significant economic impact on any small entities, unless they are offering commercial satellite services provided by a foreign entity that is subject to the restrictions of this rule. DoD was not able to identify any alternatives that would reduce the burden on small entities and meet the objectives of the rule.

VI. Paperwork Reduction Act

The rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0704–0525, titled: Foreign Commercial Satellite Services.

List of Subjects in 48 CFR Parts 204, 212, 225, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 204, 212, 225, and 252, which was published at 79 FR 45662 on August 5, 2014, is adopted as a final rule with the following changes:

- 1. The authority citation for 48 CFR parts 212 and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

- 2. Amend section 212.301 in paragraph (f)(xlviii) by removing “225.772–5” and adding “225.772–5, to

comply with 10 U.S.C. 2279” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7049 [Amended]

■ 3. Amending section 252.225–7049 by—

■ a. Removing the clause date of “(AUG 2014)” and adding “(DEC 2014)” in its place; and

■ b. In paragraph (b) introductory text, removing “DFARS 225.71–4” and adding “DFARS 225.772–4” in its place.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

RIN 0750–AI44

Defense Federal Acquisition Regulation Supplement: Update Contractor and Government Entity (CAGE) Code Information (DFARS Case 2014–D013)

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 remove duplicative Commercial and Government Entity (CAGE) code instructions and an associated clause.

DATES: Effective December 11, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 571–372–6090.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove text that is duplicative as a result of Federal Acquisition Regulation (FAR) final rule 2012–024, “Commercial and Government Entity Code”. The FAR rule, which was published in the *Federal Register* at 79 FR 31187 on May 30, 2014, requires all offerors to obtain a CAGE code, which was previously only required for the DoD. The new FAR CAGE code requirement took effect on November 1, 2014, which made the DFARS language at subpart 204.72 and the clause at 252.204–7001 no longer necessary.

The following changes are made by this rule:

- Add a reference at DFARS 204.18 to DFARS Procedures, Guidance, and Information text.

- Delete DFARS subpart 204.72.

- Delete the clause at DFARS 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the rule is removing unnecessary text that is now covered in the FAR. These requirements affect only the internal operating procedures of the Government.

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 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. 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.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

This rule affects the information collection requirements in the provision at DFARS 252.204–7001, currently approved under OMB Control Number 0704–0225, titled Defense Federal Acquisition Regulation Supplement Part 204, Administrative Matters, and related clauses at 252.204, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact is that the burden related to DFARS clause 252.204–7001 will be decreased by 2,297 hours. OMB Form 83–C, Paperwork Reduction Act Change Worksheet, requesting removal of the 2,297 hours from the OMB Control Number 0704–0225 information collection has been approved by OMB.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

■ 2. Add subpart 204.18 to read as follows:

SUBPART 204.18—COMMERCIAL AND GOVERNMENT ENTITY CODE

Sec.

204.1870 Procedures.

SUBPART 204.18—COMMERCIAL AND GOVERNMENT ENTITY CODE

204.1870 Procedures.

Follow the procedures and guidance at PGI 204–1870 concerning Commercial and Government Entity (CAGE) codes and CAGE file maintenance.

Subpart 204.72 [Removed]

■ 3. Remove subpart 204.72, consisting of sections 204.7200, 204.7201, 204.7202, 204.7202–1, 204.7202–2, 204.7202–3, 204.7203, 204.7204, 204.7205, 204.7206, and 204.7207.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7001 [Removed and Reserved]

■ 4. Remove and reserve 252.204–7001.

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