

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/dars/dfars/transformation/index.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The rule revises DFARS Subpart 239.70 to delete obsolete procedures for the exchange or sale of Government-owned information technology. DoD now handles the exchange or sale of information technology equipment in the same manner as other personal property, in accordance with DoD 4140.1-R, DoD Supply Chain Materiel Management Regulation. The proposed rule adds a reference to DoD 4140.1-R.

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 does not expect this rule to 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 proposed DFARS change is limited to the deletion of obsolete procedures for the exchange or sale of Government-owned information technology. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D094.

### 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 239

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Part 239 as follows:

1. The authority citation for 48 CFR Part 239 continues to read as follows:

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

#### PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

2. Subpart 239.70 is revised to read as follows:

##### Subpart 239.70—Exchange or Sale of Information Technology

Sec.  
239.7001 Policy.

##### 239.7001 Policy.

Agencies shall follow the procedures in DoD 4140.1-R, DoD Supply Chain Materiel Management Regulation, Chapter 9, Section C9.5, when considering the exchange or sale of Government-owned information technology.

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 239 and 252

[DFARS Case 2003-D068]

#### Defense Federal Acquisition Regulation Supplement; Acquisition of Information Technology

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on the acquisition of information technology. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before November 15, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D068, using any of the following methods:

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

○ Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

○ E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003-D068 in the subject line of the message.

○ Fax: (703) 602-0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Ms. Gabrielle Ward, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

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

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Gabrielle Ward, (703) 602-2022.

#### 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/dars/dfars/transformation/index.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

○ Remove text that is obsolete or unnecessary;

○ Clarify text addressing charges for special construction or assembly related to telecommunications services;

○ Clarify the text of clauses used in basic agreements for telecommunications services; and

○ Remove text addressing the acquisition of telecommunications services from foreign carriers. Text on this subject will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at <http://www.acq.osd.mil/dpap/dars/pgi>.

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 does not expect this rule to 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 clarifies DFARS text, but makes no significant change to DoD policy for the acquisition of information technology. Therefore, DoD has not performed an initial regulatory flexibility analysis. 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 2003-D068.

### 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 239

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 239 as follows:

1. The authority citation for 48 CFR part 239 continues to read as follows:

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

### PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

#### 239.7200 [Removed]

2. Section 239.7200 is removed.

3. Section 239.7201 is added to read as follows:

#### 239.7201 Solicitation requirements.

Contracting officers shall ensure that all applicable Federal Information Processing Standards are incorporated into solicitations.

#### 239.7202 [Removed]

4. Section 239.7202 is removed.

5. Section 239.7400 is amended by revising the second sentence to read as follows:

#### 239.7400 Scope.

\* \* \* Telecommunications services meet the definition of information technology.

6. Section 239.7402 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

#### 239.7402 Policy.

(a) *Acquisition.* DoD policy is to acquire telecommunications services from common and noncommon telecommunications carriers—

(1) On a competitive basis, except when acquisition using other than full and open competition is justified;

(2) Recognizing the regulations, practices, and decisions of the Federal Communications Commission (FCC) and other governmental regulatory bodies on rates, cost principles, and accounting practices; and

(3) Making provision in telecommunications services contracts for adoption of—

(i) FCC approved practices; or

(ii) The generally accepted practices of the industry on those issues concerning common carrier services where—

(A) The governmental regulatory body has not expressed itself;

(B) The governmental regulatory body has declined jurisdiction; or

(C) There is no governmental regulatory body to decide.

\* \* \* \* \*

(c) *Foreign carriers.* For information on contracting with foreign carriers, see PGI 239.7402(c).

#### 239.7403 and 239.7404 [Removed and Reserved]

7. Sections 239.7403 and 239.7404 are removed and reserved.

8. Section 239.7406 is amended by revising paragraph (c) to read as follows:

#### 239.7406 Cost or pricing data and information other than cost or pricing data.

\* \* \* \* \*

(c) Contracting officers shall obtain sufficient information to determine that the prices are reasonable in accordance with FAR 15.403-3 or 15.403-4.

9. Section 239.7408-1 is amended in paragraph (e) by revising the last sentence to read as follows:

#### 239.7408-1 General.

\* \* \* \* \*

(e) \* \* \* The contracting officer must approve special construction charges before final payment.

10. Section 239.7408-2 is amended by revising paragraph (a) to read as follows:

#### 239.7408-2 Applicability of construction labor standards for special construction.

(a) The construction labor standards in FAR Subpart 22.4 ordinarily do not apply to special construction. However, if the special construction includes construction, alteration, or repair (as defined in FAR 22.401) of a public building or public work, the construction labor standards may apply. Determine applicability under FAR 22.402.

\* \* \* \* \*

11. Section 239.7409 is amended in paragraph (b) by revising the second sentence to read as follows:

#### 239.7409 Special assembly.

\* \* \* \* \*

(b) \* \* \* The contracting officer should negotiate special assembly rates and charges before starting service.  
\* \* \*

12. Section 239.7411 is amended by revising paragraph (d) to read as follows:

#### 239.7411 Contract clauses.

\* \* \* \* \*

(d) Use the clause at 252.239-7016, Telecommunications Security Equipment, Devices, Techniques, and Services, in solicitations and contracts when performance of a contract requires secure telecommunications.

#### Subpart 239.75 [Removed]

13. Subpart 239.75 is removed.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 252.239-7013 is revised to read as follows:

#### 252.239-7013 Obligation of the Government.

As prescribed in 239.7411(c), use the following clause:

#### OBLIGATION OF THE GOVERNMENT (XXX 2005)

(a) This basic agreement is not a contract. The Government incurs no monetary liability under this agreement.

(b) The Government incurs liability only upon issuance of a communications service authorization, which is the contract and incorporates the terms of this agreement.  
(End of clause)

15. Section 252.239-7015 is revised to read as follows:

#### 252.239-7015 Continuation of Communication Service Authorizations.

As prescribed in 239.7411(c), use the following clause:

#### CONTINUATION OF COMMUNICATION SERVICE AUTHORIZATIONS (XXX 2005)

(a) All communication service authorizations issued by \_\_\_\_\_ incorporating Basic Agreement Number \_\_\_\_\_, dated \_\_\_\_\_, are modified to incorporate this basic agreement.

(b) Communication service authorizations currently in effect which were issued by the activity in paragraph (a) of this clause incorporating other agreements with the Contractor may also be modified to incorporate this agreement.

(c) This basic agreement is not a contract.  
(End of clause)

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