

inherently governmental functions, and recommended that DoD require contracting officers to provide written justifications of decisions made under this DFARS rule and that those justifications be made publicly available on the World Wide Web.

DoD Response: In accordance with FAR Subpart 4.8, the Government contract file should document the basis for an acquisition and the relevant decisions made by the contracting officer. DoD does not believe it is necessary to post the determinations made in accordance with this rule on the World Wide Web.

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 a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to ensure proper management and oversight of contracts for functions that generally are not considered to be inherently governmental, but may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. The impact of the rule on small entities is unknown at this time. DoD agencies will implement the requirements of the rule in making decisions whether to enter into, and in the administration of, contracts for performance of the acquisition functions closely associated with inherently governmental functions that are listed in section 7.503(d) of the Federal Acquisition Regulation. DoD received no comments on the initial regulatory flexibility analysis. As a result of comments received on the interim rule, the final rule contains a minor change to clarify that Government personnel “oversee” but do not “supervise” contractor personnel.

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 207

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR part 207, which was published at 70 FR 14572 on March 23, 2005, is adopted as a final rule with the following change:

PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

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

207.503 [Amended]

■ 2. Section 207.503 is amended in paragraph (S-70)(1)(i)(B) by removing “supervise” and adding in its place “oversee”.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 207 and Appendix D to Chapter 2

[DFARS Case 2003-D071]

Defense Federal Acquisition Regulation Supplement; Component Breakout

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 remove procedures for breaking out components of end items for future acquisitions. These procedures have been relocated to the new DFARS companion resource, Procedures, Guidance, and Information. This final rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: *Effective Date:* March 21, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0296; facsimile (703) 602-0350. Please cite DFARS Case 2003-D071.

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 final rule is a result of the DFARS Transformation initiative. The rule removes DFARS Appendix D, which contains DoD policy and procedures for breakout of components of end items for future acquisitions. The portions of Appendix D containing DoD policy on component breakout have been relocated to a new section at DFARS 207.171. The portions of Appendix D containing internal DoD procedures for component breakout have been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 14623 on March 23, 2005. One industry association submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* Relocation of component breakout requirements to a guidance document is not appropriate, because it would provide DoD with the option to unilaterally eliminate the breakout requirement in its entirety, without affording the public an opportunity to object.

DoD Response: Although PGI is more than a guidance document, DoD agrees that portions of Appendix D are more appropriate for retention in the DFARS. Therefore, the portions of Appendix D containing DoD policy for component breakout have been relocated to a new section at DFARS 207.171. The portions of Appendix D that have been relocated to PGI are limited to internal DoD procedures for conducting breakout reviews, documenting breakout decisions, and maintaining breakout records. These procedures are still

mandatory for use, in accordance with 207.171(d) of this final rule.

2. *Comment:* Transfer of the component breakout requirements to a guidance document, as opposed to maintaining a regulatory requirement, would de-emphasize the importance of tracking this type of information. Without such information, DoD would not be able to ensure its compliance with existing domestic source laws and regulations. In addition, de-emphasizing the importance of this information would be inconsistent with the on-going U.S. initiative on limiting the adverse effects of offsets in defense procurement. Since the issue of offsets is integrally entwined with foreign and domestic sources of major weapons systems and components, the ability to establish a baseline for components would be impaired by de-emphasizing the requirement to track the breakout of components.

DoD Response: DoD believes that the final rule actually emphasizes the importance of component breakout since, prior to this rule, there was no reference to component breakout or Appendix D in any of the numbered sections of the DFARS. In addition, DoD's ability to ensure compliance with existing domestic source laws and regulations, or to track the effect of offsets, is not related to component breakout procedures. Appendix D does not require any breaking out of data, nor does it require tracking of data on components. While unrelated to component breakout, DFARS 225.7307 specifies that DoD does not encourage, enter into, or commit U.S. firms to foreign military sales offset arrangements. The only discernable connection between component breakout policy and offsets is that U.S. industry would not be able to offer components for manufacture in a foreign country under offset arrangements if DoD breaks out the component for direct procurement by DoD. This connection in no way affects DoD's component breakout policy or the decision regarding placement of breakout procedures in 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 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 rule makes no significant change to DoD policy for breakout of

components of end items for future acquisitions.

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 207

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 207 and Appendix D to Chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR part 207 and Appendix D to subchapter I continues to read as follows:

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

PART 207—ACQUISITION PLANNING

■ 2. Sections 207.171 through 207.171-4 are added to read as follows:

207.171 Component breakout.

207.171-1 Scope.

(a) This section provides policy for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

(b) This section does not apply to—

(1) The initial decisions on Government-furnished equipment or contractor-furnished equipment that are made at the inception of an acquisition program; or

(2) Breakout of parts for replenishment (see Appendix E).

207.171-2 Definition.

Component, as used in this section, includes subsystems, assemblies, subassemblies, and other major elements of an end item; it does not include elements of relatively small annual acquisition value.

207.171-3 Policy.

DoD policy is to break out components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, the agency shall break out that component if—

(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, the agency shall consider breakout of the component if substantial net cost savings will result from—

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed \$1 million for the current year's requirement.

207.171-4 Procedures.

Agencies shall follow the procedures at PGI 207.171-4 for component breakout.

Appendix D to Chapter 2 [Removed and Reserved]

■ 3. Appendix D to Chapter 2 is removed and reserved.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207, 208, 216, 217, and 237

[DFARS Case 2002-D024]

Defense Federal Acquisition Regulation Supplement; Approval of Service Contracts and Task and Delivery Orders

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 implement Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 and Section 854 of the National Defense Authorization Act for Fiscal Year 2005. Section 801(b) requires DoD to establish and implement a management structure for the procurement of services. Section 854 requires DoD agencies to comply with certain review and approval requirements before using a non-DoD