

(1) The name, address, telephone number, and facsimile telephone number of the person submitting the instrument by facsimile;

(2) The number of pages submitted by facsimile; and

(3) The name of the vessel, official number or hull identification number of the vessel(s), and the name(s) of the owner(s) of the vessel(s) to which the instrument relates.

(d) The filing of any instrument submitted by facsimile is terminated and the instrument will be returned to the submitter if the instrument is subject to termination for any cause under § 67.217(a).

#### § 67.540 [Removed]

■ 5. Remove § 67.540.

#### § 67.550 [Amended]

■ 6. Amend § 67.550 by removing from Table 67.550—Fees, the entry reading: “Facsimile submission handling Subpart O 2.00<sup>1</sup>.”

Dated: July 26, 2007.

J.G. Lantz,

Acting Assistant Commandant For Prevention, U.S. Coast Guard.

[FR Doc. E7-14938 Filed 8-1-07; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 202 and 204

#### Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update organization names, office symbols, and an Internet address.

**DATES:** *Effective Date:* August 2, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-7887.

**SUPPLEMENTARY INFORMATION:** This final rule amends DFARS text as follows:

• *Section 202.101.* Updates the lists of Army and Defense Logistics Agency contracting activities.

• *Section 204.7005.* Updates the Internet address for DoD order code assignment listings, and updates the office symbol for the Air Force order code monitor.

#### List of Subjects in 48 CFR Parts 202 and 204

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR Parts 202 and 204 are amended as follows:

#### PART 202—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for 48 CFR Parts 202 and 204 continues to read as follows:

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

■ 2. Section 202.101 is amended in the definition of “Contracting activity” as follows:

■ a. By revising the list with the heading “ARMY”; and

■ b. Under the heading “DEFENSE LOGISTICS AGENCY”, by removing “Office of the Deputy Director, Logistics Operations” and adding in its place “Acquisition Management Directorate”. The revised list reads as follows:

#### 202.101 Definitions.

\* \* \* \* \*

Army

Headquarters, U.S. Army Contracting Agency Joint Contracting Command—Iraq/Afghanistan  
National Guard Bureau  
Program Executive Office for Simulation, Training, and Instrumentation  
U.S. Army Aviation and Missile Command  
U.S. Army Communications-Electronics Command  
U.S. Army Corps of Engineers  
U.S. Army Intelligence and Security Command  
U.S. Army Joint Munitions and Lethality Life Cycle Management Command  
U.S. Army Materiel Command, Office of Command Contracting  
U.S. Army Medical Command  
U.S. Army Medical Research and Materiel Command  
U.S. Army Military Surface Deployment and Distribution Command  
U.S. Army Research, Development, and Engineering Command  
U.S. Army Space and Missile Defense Command  
U.S. Army Sustainment Command

U.S. Army Tank-Automotive and Armaments Command

\* \* \* \* \*

#### PART 204—ADMINISTRATIVE MATTERS

#### § 204.7005 [Amended]

■ 3. Section 204.7005 is amended as follows:

■ a. In paragraph (c), by removing “Air Force: SAF/AQCX” and adding in its place “Air Force: SAF/AQCI”; and

■ b. In paragraph (d) by removing “<http://www.acq.osd.mil/dpap/dfars/ordercode.htm>” and adding in its place “<http://www.acq.osd.mil/dpap/dars/ordercodes/index.htm>”.

[FR Doc. E7-14897 Filed 8-1-07; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 202, 210, 213, 215, and 219

RIN 0750-AF36

#### Defense Federal Acquisition Regulation Supplement; Limitations on Tiered Evaluation of Offers (DFARS Case 2006-D009)

**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 816 of the National Defense Authorization Act for Fiscal Year 2006. Section 816 requires DoD to prescribe guidance on the use of tiered evaluation of offers for contracts and for task or delivery orders under contracts.

**DATES:** *Effective Date:* August 2, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-7887. Please cite DFARS Case 2006-D009.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 71 FR 53042 on September 8, 2006, to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). Section

816 requires DoD to prescribe guidance on the use of tiered evaluation of offers for contracts and for task or delivery orders under contracts. The guidance must include a prohibition on the use of tiered evaluation of offers unless the contracting officer (1) has conducted market research in accordance with Part 10 of the Federal Acquisition Regulation (FAR); (2) is unable, after conducting market research, to determine whether or not a sufficient number of qualified small businesses are available to justify limiting competition for the contract or order; and (3) includes in the contract file a written explanation of why the contracting officer was unable to make the determination.

Four sources submitted comments on the interim rule. A discussion of the comments is provided below. In addition to the changes addressed in the DoD response to Comment 1, the final rule revises section 213.106–1–70 to provide a cross-reference to section 215.203–70, instead of duplicating the text found in that section.

1. *Comment:* The rule failed to include an explicit prohibition.

*DoD Response:* While DoD believes that stating the actions that the contracting officer must take before using tiered evaluation is an implied prohibition, the final rule contains amendments at 215.203–70 to explicitly prohibit the contracting officer from using tiered evaluation unless those actions have been taken.

2. *Comment:* Defining the technique of tiered evaluation in the DFARS legitimizes the use of tiered evaluation.

*DoD Response:* The statute does not completely prohibit the use of tiered evaluation; it requires that certain actions be taken before this technique may be used. To permit an understanding of the statutory requirements, the technique must first be defined.

3. *Comment:* FAR Part 10 already requires the market research required by the statute, and no additional research is necessary.

*DoD Response:* DoD agrees that the FAR already requires agencies to conduct market research appropriate to the circumstances before soliciting offers for acquisitions in excess of the simplified acquisition threshold and, when necessary and cost-effective, below the simplified acquisition threshold. However, DoD believes the additional language in DFARS Part 210 is appropriate to reinforce the statutory requirement for market research before conducting a tiered evaluation of offers.

4. *Comment:* The phrase “appropriate to the circumstances” at DFARS 210.001(a)(i), with regard to

requirements for conducting market research, should be deleted. Although the phrase is consistent with the FAR, it is not in the statute being implemented and creates ambiguity.

*DoD Response:* The text at DFARS 210.001 is consistent with both the statute and FAR Part 10. The statute prohibits the use of tiered evaluation of offers unless, among other things, the contracting officer has conducted market research in accordance with Part 10 of the FAR. The implementing DFARS language reflects the policy in FAR Part 10, requiring the conduct of market research “appropriate to the circumstances.” The DFARS language recognizes that there are many ways to conduct market research, and that the methods employed should be those that will be effective for the particular acquisition.

5. *Comment:* The rule states that the tiered evaluation of offers order of precedence shall be consistent with FAR Part 19. However, FAR Part 19 does not provide an “order of precedence” among the various small business goals.

*DoD Response:* FAR Part 19 does not specifically state an order of precedence. However, it does provide direction on the circumstances under which acquisitions may or must be set aside for various categories of small businesses. For example, FAR 19.1305 states that the contracting officer must consider HUBZone set-asides for acquisitions at a certain dollar level before considering small business set-asides. DoD believes that, in establishing an order of precedence in a tiered evaluation of offers, that order of precedence must be consistent with the direction in FAR Part 19.

6. *Comment:* Guidance to the contracting officer can be addressed in the Procedures, Guidance, and Information (PGI), consistent with the law.

*DoD Response:* PGI guidance to supplement this rule is considered unnecessary at this time.

7. *Comment:* The rule should include coverage stating that a large business involved in an 8(a) mentor-protégé agreement shall not offer itself as a large business in competition against the 8(a) mentor-protégé agreement. In a recent cascading set-aside, a large business offered itself as a large entity, as a subcontractor to a small business, and as a mentor in an 8(a) mentor-protégé joint venture.

*DoD Response:* The issue of a mentor firm competing against a protégé firm is not specific to tiered evaluation of offers. Therefore, the final rule contains no change relating to this comment.

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 the rule relates to market research and documentation requirements performed by the Government.

## 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 Parts 202, 210, 213, 215, and 219

Government procurement.

### Michele P. Peterson,

*Editor, Defense Acquisition Regulations System.*

■ Accordingly, the interim rule amending 48 CFR parts 202, 210, 213, 215, and 219, which was published at 71 FR 53042 on September 8, 2006, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 202, 210, 213, 215, and 219 continues to read as follows:

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

## PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 2. Section 213.106–1–70 is revised to read as follows:

### 213.106–1–70 Soliciting competition—tiered evaluation of offers.

See limitations on the use of tiered evaluation of offers at 215.203–70.

## PART 215—CONTRACTING BY NEGOTIATION

■ 3. Section 215.203–70 is amended by revising paragraph (c) introductory text, paragraph (c)(1) introductory text, and paragraph (c)(2) to read as follows:

### 215.203–70 Requests for proposals—tiered evaluation of offers.

\* \* \* \* \*

(c) The contracting officer is prohibited from issuing a solicitation with a tiered evaluation of offers unless—

(1) The contracting officer conducts market research, in accordance with

FAR Part 10 and Part 210, to determine—

\* \* \* \* \*

(2) If the contracting officer cannot determine whether the criteria in paragraph (c)(1) of this section are met, the contracting officer includes a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109-163).

[FR Doc. E7-14906 Filed 8-1-07; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 205 and 225

RIN 0750-AF33

#### Defense Federal Acquisition Regulation Supplement; Berry Amendment Notification Requirement (DFARS Case 2006-D006)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 833(a) of the National Defense Authorization Act for Fiscal Year 2006. Section 833(a) requires the posting of a notice on the FedBizOpps Internet site, when certain exceptions to domestic source requirements apply to an acquisition.

**DATES:** *Effective Date:* August 2, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-7887. Please cite DFARS Case 2006-D006.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 71 FR 58536 on October 4, 2006, to implement Section 833(a) of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). Section 833(a) amended 10 U.S.C. 2533a to add a requirement for the posting of a notice on the FedBizOpps Internet site, within 7 days after award of a contract exceeding the simplified acquisition threshold, for the acquisition of (1) certain clothing, fiber,

yarn, or fabric items, when DoD has determined that adequate domestic items are not available; or (2) chemical warfare protective clothing, when an exception to domestic source requirements applies because the acquisition furthers an agreement with a qualifying country.

One source submitted comments on the interim rule, as discussed below.

**Comments:** The respondent strongly supported the initiative to insert transparency into the process of waiving domestic source requirements. Although the law allows posting within 7 days after contract award, the respondent encouraged a more immediate notice to industry, preferably before contract award. The respondent also suggested that there should be a permanent posting of current domestic nonavailability determinations, so that industry (especially a company just entering the contracting arena) would have information regarding the materials or components for which a waiver has been granted. The respondent recommended that this information be available in an easily accessible and permanent location to permit better compliance with domestic source requirements.

**DoD Response:** When drafting the interim rule, DoD determined that the least burdensome approach for posting the notice would be to make it part of the synopsis that is published after contract award in accordance with FAR 5.301. Therefore, the final rule continues to provide for posting of the notice within 7 days after contract award, consistent with the statutory provisions. A listing of current domestic nonavailability determinations is available on the Defense Procurement and Acquisition Policy Web site, at <http://www.acq.osd.mil/dpap/paic/dnad.htm>.

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 the rule relates to a notification requirement that is performed by the Government.

##### 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 Parts 205 and 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

#### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Parts 205 and 225, which was published at 71 FR 58536 on October 4, 2006, is adopted as a final rule without change.

[FR Doc. E7-14904 Filed 8-1-07; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 225 and 252

RIN 0750-AF54

#### Defense Federal Acquisition Regulation Supplement; Berry Amendment Restrictions—Clothing Materials and Components Covered (DFARS Case 2006-D031)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 833(b) of the National Defense Authorization Act for Fiscal Year 2006. Section 833(b) expands the foreign source restrictions applicable to the acquisition of clothing to also include clothing materials and components, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof.

**DATES:** *Effective Date:* August 2, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-7887. Please cite DFARS Case 2006-D031.

#### SUPPLEMENTARY INFORMATION: