

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 202 and 218**

RIN 0750-AG19

**Defense Federal Acquisition Regulation Supplement; Contract Actions Supporting Contingency Operations or Facilitating Defense Against or Recovery From Nuclear, Biological, Chemical, or Radiological Attack (DFARS Case 2008-D026)**

**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 address determination requirements with regard to the use of emergency acquisition flexibilities for contract actions supporting contingency operations or facilitating defense against or recovery from nuclear, biological, chemical, or radiological attack. The rule lowers the DoD level of approval for such determinations.

**DATES:** *Effective Date:* January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Sawyer, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-8384; facsimile 703-602-7887. Please cite DFARS Case 2008-D026.

**SUPPLEMENTARY INFORMATION:****A. Background**

Subpart 18.2 of the Federal Acquisition Regulation (FAR) provides for certain flexibilities in the execution of contracts for supplies and services that are determined by the head of the agency to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. In accordance with the delegation of authority provision at FAR 1.108(b), this final rule adds a new section at DFARS 218.270 to authorize heads of DoD contracting activities to make the determination addressed in FAR Subpart 18.2. The rule will facilitate the use of streamlined acquisition procedures in emergency situations.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008-D026.

**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 and 218**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 202 and 218 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202 and 218 continues to read as follows:

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

**PART 202—DEFINITIONS OF WORDS AND TERMS****202.101 [Amended]**

■ 2. Section 202.101 is amended in the definition of “Head of the agency” by adding at the end “(For emergency acquisition flexibilities, *see* 218.270.)”.

**PART 218—EMERGENCY ACQUISITIONS**

■ 3. Section 218.270 is added to read as follows:

**218.270 Head of contracting activity determinations.**

For contract actions supporting contingency operations or facilitating defense against or recovery from nuclear, biological, chemical, or radiological attack, the term “head of the agency” is replaced with “head of the contracting activity,” as defined in FAR 2.101, in the following locations:

(a) FAR 2.101:

(1) Definition of “Micro-purchase threshold,” paragraph (3).

(2) Definition of “Simplified acquisition threshold.”

(b) FAR 12.102(f).

(c) FAR 13.201(g).

(d) FAR 13.500(e).

(e) FAR 18.2.

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 203**

RIN 0750-AG21

**Defense Federal Acquisition Regulation Supplement; Separation of Senior Roles in Source Selection (DFARS Case 2008-D037)**

**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 address requirements for the separation of functions in source selection. The rule requires the military departments and defense agencies to certify every two years that no senior leader has performed multiple roles in the acquisition of a major weapon system or major service.

**DATES:** *Effective Date:* January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Sawyer, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-8384; facsimile 703-602-7887. Please cite DFARS Case 2008-D037.

**SUPPLEMENTARY INFORMATION:****A. Background**

DFARS 203.170(a) prohibits DoD senior leaders from performing multiple roles in major source selections. To reinforce this policy, this final rule adds a requirement for DoD departments and agencies to certify every two years that no senior leader has performed multiple roles in the acquisition of a major weapon system or major service.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under

41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008–D037.

### 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 203

Government procurement.

Michele P. Peterson,

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 203 is amended as follows:

#### PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 1. The authority citation for 48 CFR part 203 continues to read as follows:

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

■ 2. Section 203.170 is amended by revising paragraph (a) to read as follows:

#### 203.170 Business practices.

\* \* \* \* \*

(a) Senior leaders shall not perform multiple roles in source selection for a major weapon system or major service acquisition. Departments and agencies shall certify every 2 years that no senior leader has performed multiple roles in the acquisition of a major weapon system or major service. Completed certifications shall be forwarded to the Director, Defense Procurement, in accordance with the procedures at PGI 203.170.

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[FR Doc. E9–666 Filed 1–14–09; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 203, 209, and 252

RIN 0750–AG07

#### Defense Federal Acquisition Regulation Supplement; Senior DoD Officials Seeking Employment With Defense Contractors (DFARS Case 2008–D007)

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

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

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 847 of the National Defense Authorization Act for Fiscal Year 2008. Section 847 addresses requirements for senior DoD officials to obtain a post-employment ethics opinion before accepting a position from a DoD contractor within two years after leaving DoD service.

**DATES:** *Effective date:* January 15, 2009.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 16, 2009, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2008–D007, using any of the following methods:

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

○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2008–D007 in the subject line of the message.

○ *Fax:* 703–602–7887.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Angie Sawyer, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

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

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Sawyer, 703–602–8484.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule implements Section 847 of the National Defense

Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 847 requires that a DoD official, who has participated personally and substantially in a DoD acquisition exceeding \$10 million or who has held a key acquisition position, must obtain a written opinion from a DoD ethics counselor regarding the activities that the official may undertake on behalf of a DoD contractor within two years after leaving DoD service. In addition, Section 847 prohibits a DoD contractor from providing compensation to such a DoD official without first determining that the official has received or appropriately requested a post-employment ethics opinion.

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 requirement to verify that a prospective employee has received or requested the appropriate DoD ethics opinion should involve minimal effort on the part of a contractor. 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 2008–D007.

##### 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.*

##### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 847 requires that DoD officials that have participated personally and substantially in a DoD acquisition exceeding \$10 million, or that have held certain key acquisition positions, must obtain a written opinion from the appropriate DoD ethics