

termination for cause or default is just one consideration in making a determination of contractor responsibility.

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–D022.

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 209

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 209 is amended as follows:

PART 209—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for 48 CFR part 209 continues to read as follows:

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

■ 2. Section 209.105–1 is revised to read as follows:

209.105–1 Obtaining information.

(1) For guidance on using the Excluded Parties List System, see PGI 209.105–1.

(2) A satisfactory performance record is a factor in determining contractor responsibility (*see* FAR 9.104–1(c)). One source of information relating to contractor performance is the Past Performance Information Retrieval System (PPIRS), available at <http://www.ppirs.gov>. Information relating to contract terminations for cause and for default is also available through PPIRS (*see* PGI 212.403(c) and PGI 249.470). This termination information is just one

consideration in determining contractor responsibility.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 212

RIN 0750–AG17

Defense Federal Acquisition Regulation Supplement; Pilot Program for Transition to Follow-On Contracting After Use of Other Transaction Authority (DFARS Case 2008–D030)

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 824 of the National Defense Authorization Act for Fiscal Year 2009. Section 824 amended the DoD pilot program for transition to follow-on contracting after use of other transaction authority, to establish a new program expiration date and to include items developed under research projects within the scope of the program.

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–D030, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2008–D030 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, 703–602–8384.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the DoD pilot program addressed in DFARS Subpart 212.70, Pilot Program for Transition to Follow-On Contracting After Use of Other Transaction Authority. The pilot program implements Section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 2371 note), and provides that certain items that do not otherwise meet the definition of “commercial item” may be treated as commercial items in the award of contracts and subcontracts that follow an other transaction agreement. Section 824 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) amended the authority for the pilot program to establish a new program expiration date of September 30, 2010, and to add items developed under research projects in accordance with 10 U.S.C. 2371 to the types of items to which the program applies.

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.* Although the rule is expected to ease the transition of nontraditional defense contractors from the use of other transaction agreements to standard contracts, the economic impact is not expected to be substantial. 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 2008–D030.

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 824 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 824 amended the DoD pilot program that permits the use of streamlined procedures in the award of contracts and subcontracts that follow other transaction agreements, to include items developed under research projects within the scope of the program. The pilot program is intended to ease the transition of nontraditional defense contractors from the use of other transaction agreements to standard contracts. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 212

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 212 is amended as follows:

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 1. The authority citation for 48 CFR part 212 continues to read as follows:

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

■ 2. Section 212.7002-1 is amended by revising paragraphs (a)(2) and (4) to read as follows:

212.7002-1 Contracts under the program.

(a) * * *

(2) Is a follow-on contract for the production of an item or process begun as a prototype project under an other transaction agreement or as a research project carried out in accordance with 10 U.S.C. 2371;

* * * * *

(4) Is awarded on or before September 30, 2010; and

* * * * *

■ 3. Section 212.7002-2 is amended by revising paragraphs (a)(1) and (3) to read as follows:

212.7002-2 Subcontracts under the program.

(a) * * *

(1) Is for the production of an item or process begun as a prototype project under an other transaction agreement or

as a research project carried out in accordance with 10 U.S.C. 2371;

* * * * *

(3) Is awarded on or before September 30, 2010;

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

RIN 0750-AG14

Defense Federal Acquisition Regulation Supplement; Delegation of Authority for Single Award Task or Delivery Order Contracts (DFARS Case 2008-D017)

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 Federal Acquisition Regulation provisions that permit the award of a single source task or delivery order contract exceeding \$100 million, if the head of the agency determines it is necessary in the public interest. The DFARS rule specifies that the authority to make such a determination may not be delegated below the level of the senior procurement executive.

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

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2008-D017.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule amending the Federal Acquisition Regulation (FAR) was published at 73 FR 54008 on September 17, 2008, to implement Section 843 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 843 prohibits the award of a task or delivery order contract in an amount exceeding \$100 million to a single source unless the head of the agency determines that: the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably

perform the work; the contract provides only for firm-fixed-price task or delivery orders; only one source is qualified and capable of performing the work at a reasonable price to the Government; or it is necessary in the public interest to award the contract to a single source due to exceptional circumstances. With regard to the delegation of authority provision at FAR 1.108(b), this DFARS rule specifies that the head of the agency may not delegate the authority to make a single source public interest determination below the level of the senior procurement executive. The rule also requires that a copy of any determination authorizing the award of a single source task or delivery order contract be submitted to the Deputy Director, Defense Procurement (Contract Policy and International Contracting).

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-D017.

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 216

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 216 continues to read as follows:

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

■ 2. Section 216.504 is added to read as follows:

216.504 Indefinite-quantity contracts.

(c)(1)(ii)(D) *Limitation on single award contracts.*