

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.

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■ 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