

(b) A determination to use a contractor to perform lead system integrator functions in accordance with 209.570–2(c)(2)—

(1) Shall specify the reasons why it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead system integrator functions, including a discussion of alternatives, such as use of the DoD workforce or a system engineering and technical assistance contractor;

(2) Shall include a plan for phasing out the use of contracted lead system integrator functions over the shortest period of time consistent with the interest of the national defense; and

(3) Shall be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

PART 237—SERVICE CONTRACTING

■ 4. Section 237.102–72 is added to read as follows:

237.102–72 Contracts for management services.

In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), DoD may award a contract for the acquisition of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, only if—

(a) The contract prohibits the contractor from performing inherently governmental functions;

(b) The DoD organization responsible for the development or production of the major system ensures that Federal employees are responsible for determining—

(1) Courses of action to be taken in the best interest of the Government; and

(2) Best technical performance for the warfighter; and

(c) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Section 252.209–7007 is amended by revising the clause date and paragraphs (a)(2), (a)(3), and (e) to read as follows:

252.209–7007 Prohibited Financial Interests for Lead System Integrators.

* * * * *

PROHIBITED FINANCIAL INTERESTS FOR LEAD SYSTEM INTEGRATORS (JUL 2009)

(a) * * *

(2) *Lead system integrator with system responsibility* means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(3) *Lead system integrator without system responsibility* means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with respect to the development or production of a major system.

* * * * *

(e) This clause implements the requirements of 10 U.S.C. 2410p, as added by Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), and Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212 and 239

RIN 0750–AG32

Defense Federal Acquisition Regulation Supplement; Use of Commercial Software (DFARS Case 2008–D044)

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 implement Section 803 of the National Defense Authorization Act for Fiscal Year 2009. Section 803 requires DoD to identify and evaluate, at all stages of the acquisition process, opportunities for the use of commercial computer software and other non-developmental software.

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

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, Defense Acquisition Regulations System,

OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0310; facsimile 703–602–7887. Please cite DFARS Case 2008–D044.

SUPPLEMENTARY INFORMATION:

A. Background

Section 803 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) requires DoD to ensure that contracting officials identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software. This final rule adds text at DFARS 212.212 to address the requirements of Section 803 of Public Law 110–117. In addition, the rule adds cross-references to existing DFARS policy regarding the acquisition of commercial software, software maintenance, and software documentation.

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–D044.

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 212 and 239

Government procurement.

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

■ Therefore, 48 CFR parts 212 and 239 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212 and 239 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.212 is revised to read as follows:

212.212 Computer software.

(1) Departments and agencies shall identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(2) See Subpart 208.74 when acquiring commercial software or software maintenance. See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 3. Section 239.101 is amended by adding a second sentence to read as follows:

239.101 Policy.

* * * See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation.

[FR Doc. E9-16659 Filed 7-14-09; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

RIN 0750-AG24

Defense Federal Acquisition Regulation Supplement; Limitation on Procurements on Behalf of DoD (DFARS Case 2008-D005)

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 801 of the National Defense Authorization Act for Fiscal Year 2008. Section 801 addresses internal controls for procurements made by non-DoD agencies on behalf of DoD.

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

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 14, 2009, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008-D005, 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-D005 in the subject line of the message.

- *Fax:* 703-602-7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Cassandra Freeman, 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. Cassandra Freeman, 703-602-8383.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 801 places limitations on acquisitions made by non-DoD agencies on behalf of DoD. Such acquisitions exceeding the simplified acquisition threshold may be made only if the head of the non-DoD agency has certified that the non-DoD agency will comply with defense procurement requirements for the fiscal year.

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 requirements of the rule are internal to the Government. 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-D005.

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 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 801 places limitations on acquisitions made by non-DoD agencies on behalf of DoD, and requires DoD to issue guidance on the appropriate use of interagency contracting. 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 217

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 217 is amended as follows:

PART 217—SPECIAL CONTRACTING METHODS

■ 1. The authority citation for 48 CFR part 217 continues to read as follows:

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

■ 2. Section 217.7800 is amended by revising paragraph (a) to read as follows:

217.7800 Scope of subpart.

* * * * *

(a) Implements Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375) and Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); and

* * * * *

■ 3. Sections 217.7801 and 217.7802 are revised to read as follows:

217.7801 Definitions.

As used in this subpart—
Acquisition official means—

- (1) A DoD contracting officer; or
- (2) Any other DoD official authorized to approve a direct acquisition or an assisted acquisition on behalf of DoD.