

contracting activity subsequently determines that the operational area has evolved into a less stable environment, the head of the contracting activity will make a determination that conditions exist that limit normal business operations. The contracting officer will then reactivate clause 252.232-7011 by issuance of a contract modification.

■ 4. Section 232.908 is added to read as follows:

#### 232.908 Contract clauses

Use the clause at 252.232-7011, Payments in Support of Emergencies and Contingency Operations, in solicitations and contracts in addition to the approved clause prescribed in FAR 32.908 in acquisitions that meet the applicability criteria at 232.901(1).

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Section 252.232-7011 is added to read as follows:

#### 252.232-7011 Payments in Support of Emergencies and Contingency Operations.

As prescribed in section 232.908, use the following clause:

#### PAYMENTS IN SUPPORT OF EMERGENCIES AND CONTINGENCY OPERATIONS (JUL 2010)

(a) Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation.

(b) Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer

(c) *Invoice payments.*

(1) *Due date.*

(i) Payment will be made as soon as possible once a proper invoice is received and matched with the contract and the receiving/acceptance report.

(ii) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the due date will be as specified in the contract.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice should include the items listed in paragraphs (c)(2)(i) through (c)(2)(x) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (*e.g.*, shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (when required). The taxpayer identification number is required for all payees subject to the U.S. Internal Revenue Code.

(ix) Electronic funds transfer banking information.

(A) The Contractor shall include electronic funds transfer banking information on the invoice only if required elsewhere in this contract.

(B) If electronic funds transfer banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct electronic funds transfer banking information in accordance with the applicable solicitation provision (*e.g.*, 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) Electronic funds transfer banking information is not required if the Government waived the requirement to pay by electronic funds transfer.

(x) Any other information or documentation required by the contract (*e.g.*, evidence of shipment).

(3) *Discounts for prompt payment.* The designated payment office will take cost-effective discounts if the payment is made within the discount terms of the contract.

(4) *Contract financing payment.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment, including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact; and

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(d) This clause is applicable until otherwise notified by the Contracting Officer.

Upon notification by issuance of a contract modification, the appropriate FAR Prompt Payment clause in the contract becomes applicable.

(End of clause)

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 205 and 210

#### Defense Federal Acquisition Regulation Supplement; Publication of Notification of Bundling of Contracts of the Department of Defense (DFARS Case 2009-D033)

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

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

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 820 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84, enacted October 28, 2009).

**DATES:** *Effective Date:* July 13, 2010.

*Comment Date:* Comments on the interim rule should be submitted in writing to the address shown below on or before September 13, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2009-D033, 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 2009-D033 in the subject line of the message.

○ *Fax:* 703-602-0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

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

**FOR FURTHER INFORMATION CONTACT:** Meredith Murphy, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 703-602-1302; facsimile 703-602-0350.

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

This DFARS case implements section 820 of the National Defense Authorization Act for Fiscal Year 2010. Section 820 is entitled "Publication of Notification of Bundling of Contracts of the Department of Defense."

The new statute requires DoD contracting officers to publish a notification "consistent with the requirements" of FAR 10.001(c)(2) on FedBizOpps.gov, or any successor site, at least 30 days prior to the release of a solicitation for a bundled acquisition. In addition, if the DoD agency has determined that "measurably substantial benefits are expected to be derived as a result of bundling," the notification must include a brief description of those benefits. The acquisitions covered by section 820 are defined at 820(b) as those that are funded entirely by DoD funds and covered by FAR 7.107, entitled "Additional requirements for acquisitions involving bundling."

The statute, at section 820(c), provides that nothing in the new requirement shall be construed to—

- (a) Alter any other publication or synopsis requirement;
- (b) Require the public availability of information that is protected by the FOIA (5 U.S.C. 552(b)); or
- (c) Require contracting officers to delay the issuance of a solicitation in order to meet the 30-day period (between the notification and the release of the solicitation) if the expedited issuance of the solicitation is otherwise authorized under any other requirement of law or regulation.

The FAR, at 10.001(c), addresses the market research requirements for agencies contemplating a bundled contract award. Currently, FAR 10.001(c)(2) requires that the agency, at least 30 days before release of a solicitation for a potential bundled procurement or 30 days prior to placing a bundled order without a solicitation, must notify any affected incumbent small businesses of (a) the intention to bundle the requirement and (b) how the small businesses can contact the appropriate SBA representative. This requirement is somewhat different from that in section 820. Therefore, a cross-reference to the section 820 requirement has been added at DFARS 210.001(c)(2).

The notification requirement is added as a new DFARS 205.205–70. FAR 5.205 addresses special synopsis situations. It currently covers R&D advance notices, public-private competitions under OMB–Circular A–76, and other requirements that differ somewhat from the general synopsis requirement at FAR

5.201. Therefore, this appears to be the proper location for the bundling notification. However, because the new requirement applies only when using DoD funds, it is proposed as a new DFARS section 205.205–70, entitled "Notification of bundling of DoD contracts." The basic publication requirement is established here, but it was not deemed necessary to repeat the limitations and exclusions at section 820(c) of the statute because nothing in the new language states or implies that the opposite is, or could be, the case.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

DoD does not expect that this interim rule will 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 does not impose any additional requirements on small businesses. In fact, availability of the notice of potential bundling may enable small businesses to compete for more work of which the firms might otherwise have been unaware. Prior to enactment of this statute, FAR 10.001(c)(2) required notification of incumbent small businesses only in circumstances where one of the requirements to be bundled is currently held by a small business. Such notification of incumbent small businesses is designed to afford them the opportunity to react prior to a final decision on bundling existing requirements, thus providing these small businesses with an opportunity to engage with Government requirements officials in the interest of retaining unbundled business (if bundled, the small business might not have the necessary capability to enable it to bid). However, the new provision enables any small businesses, whether or not an incumbent contractor, to become aware of a potential bundled opportunity, generally 30 days prior to the release of the solicitation. This broader notification requirement will provide a much wider segment of the small-business community awareness of upcoming business opportunities and then to either (1) submit a proposal for the bundled procurement or (2) interact with the requiring agency to request unbundling before the solicitation is finalized. Because of the potential for positive impact on small businesses, an Initial Regulatory Flexibility Analysis

has been performed and is summarized above.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D033) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

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

A determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling circumstances exist to promulgate this interim rule without prior opportunity for public comments pursuant to 41 U.S.C. 418b and FAR 1.501–3(b). This action is necessary because section 820 of the National Defense Authorization Act for Fiscal Year 2010 became effective upon enactment, October 28, 2009. The rule implements section 820's requirement for contracting officers to publish a notification on FedBizOpps.gov at least 30 days prior to the release of a solicitation for a bundled acquisition. It is imperative that DoD contracting officers be made aware of this requirement as quickly as possible so that small businesses may have the benefit of the procurement planning information and the agency can comply with the statutory requirement. DoD will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 205 and 210**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 205 and 210 are amended as follows:

■ 1. The authority citation for 48 CFR parts 205 and 210 continues to read as follows:

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

## PART 205—PUBLICIZING CONTRACT ACTIONS

■ 2. Section 205.205 is added to read as follows:

### 205.205 Special situations.

#### 205.205–70 Notification of bundling of DoD contracts.

(a) When a proposed acquisition is funded entirely using DoD funds and potentially involves bundling, the contracting officer shall, at least 30 days prior to the release of a solicitation or 30 days prior to placing an order without a solicitation, publish in FedBizOpps.gov (or any successor site) a notification of the intent to bundle the requirement. In addition, if the agency has determined that measurably substantial benefits are expected to be derived as a result of bundling, the notification shall include a brief description of those benefits (*see* FAR 7.107).

(b) This requirement is in addition to the notification requirements at FAR 10.001(c)(2)(i) and (ii).

## PART 210—MARKET RESEARCH

■ 3. Paragraph (c)(2) is added to section 210.001 to read as follows:

### 210.001 Policy.

\* \* \* \* \*

(c)(2) In addition to the notification requirements at FAR 10.001(c)(2)(i) and (ii), see 205.205–70 for the bundling notification publication requirement.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 216

#### Defense Federal Acquisition Regulation Supplement; Notification Requirements for Awards of Single-Source Task or Delivery Orders (DFARS Case 2009–D036)

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

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

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 814 of the National Defense Authorization Act for Fiscal Year 2010.

**DATES:** *Effective date:* July 13, 2010.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before September 13, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2009–D036, 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 2009–D036 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

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

**FOR FURTHER INFORMATION CONTACT:** Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–1302; facsimile 703–602–0350.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This DFARS rule implements section 814 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), enacted October 28, 2009. Section 814 is entitled “Amendment to Notification Requirements for Awards of Single-Source Task or Delivery Orders.” 10 U.S.C. 2304a(d)(3)(A) prohibits the award of a sole-source task or delivery order that is estimated to exceed \$100 million (including all options) unless the head of the agency determines in writing that—

(1) The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(2) The contract provides only for firm-fixed-price task orders or delivery orders for products for which unit prices are established in the contract or services for which prices are established in the contract for the specific tasks to be performed;

(3) Only one source is qualified and capable of performing the work at a reasonable price to the government; or

(4) Because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

Section 814 requires agency heads to notify the congressional defense

committees within 30 days after making any determination for the reasons in (1) through (4) previously cited. In addition, if the task or delivery order concerns intelligence activities of the Department of Defense, the agency head also is required to provide notification within 30 days of the determination to the Permanent Select Committee on Intelligence of the House of Representatives if the order relates to tactical intelligence and intelligence-related activities, and to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives if the order relates to intelligence and intelligence-related activities other than those activities previously mentioned.

Given the need for consistency of content and format in the information provided to the Congress and the necessity for meeting the 30-day deadline for reporting the determinations to the Congress, agency heads are being asked to provide the determinations, not directly to the congressional committees, but to the Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) Defense Procurement and Acquisition Policy, Contract Policy and International Contracting. This will also enable a single office to oversee and manage the DoD picture for single-source task and delivery orders. The new reporting requirement is located at DFARS 216.504(c)(1)(ii)(D)(2).

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 604.

##### B. Regulatory Flexibility Act

DoD does not expect that this interim rule will 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 does not impose any additional requirements on small businesses and is concerned with internal Government operating procedures. Section 814 of the FY 2010 NDAA builds upon the existing requirements for justification of sole-source awards of task or delivery order contracts that are estimated to exceed \$100 million (including all options). The dollar threshold and the circumstances justifying a sole-source award are not changed by section 814. The new statute, however, requires agency heads to notify the congressional defense committees within 30 days after