

### III. Executive Order 13563

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD has determined that this rule is not excessively burdensome to the public, and is consistent with section 222 of the National Defense Authorization Act for Fiscal Year 2011.

### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because a final regulatory flexibility analysis is only required for final rules that were previously published for public comment, and for which an initial regulatory flexibility analysis was prepared (5 U.S.C. 604).

This final rule does not constitute a significant FAR revision as defined at FAR 1.501-1 because 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 the Government. Therefore, publication for public comment under 41 U.S.C. 1707 is not required.

### V. Paperwork Reduction Act

This rule modifies an existing information collection by removing the requirement for an offeror to represent whether it is or is not a United States firm by completing the clause at DFARS 252.225-7018. Deletion of this requirement reduces the total approved hours for the collection under OMB Control Number 0704-0229, "Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and Related Clauses" from 57,140 to 57,135. A change request has been submitted to OMB.

### List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

### PART 225—FOREIGN ACQUISITION

#### 225.7016 through 225.7016-4 [Removed]

■ 2. Sections 225.7016 through 225.7016-4 are removed.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 252.225-7018 [Removed and reserved]

■ 3. Section 252.225-7018 is removed and reserved.

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### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Parts 246 and 252

RIN 0750-AG73

#### Defense Federal Acquisition Regulation Supplement; Safety of Facilities, Infrastructure, and Equipment for Military Operations (DFARS Case 2009-D029)

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

**ACTION:** Final rule.

**SUMMARY:** DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 807 of the National Defense Authorization Act for Fiscal Year 2010. Section 807 requires that facilities, infrastructure, and equipment that are intended for use by military or civilian personnel of the Department of Defense (DoD), in current or future military operations, should be inspected for safety and habitability prior to use, and that such facilities should be brought into compliance with generally accepted standards for the safety and health of personnel to the maximum extent practicable consistent with the requirements of military operations and the best interests of DoD to minimize the safety and health risk posed to such personnel.

**DATES:** *Effective date:* March 17, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Clare Zebrowski, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-0289; facsimile 703-602-0350. Please cite DFARS Case 2009-D029.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published an interim rule at 75 FR 66683 on October 29, 2010, to implement section 807 of the National Defense Authorization Act for Fiscal

Year 2010 (Pub. L. 111-84), which was signed on October 28, 2009. Section 807 requires that—

- Each contract, including task or delivery orders, entered into for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, and equipment for use by DoD military or civilian personnel should be inspected for safety and habitability prior to use to minimize the safety and health risk posed to such personnel;

- The term "generally accepted standards" shall be defined with respect to fire protection, structural integrity, electrical systems, plumbing, water treatment, waste disposal, and telecommunications networks for the purposes of this section; and

- Exceptions and limitations shall be provided as may be needed to ensure that this section can be implemented in a manner that is consistent with the requirements of military operations and the best interests of the Department of Defense.

There were no comments submitted on the interim rule.

### II. Executive Order 12866

This rule is a significant regulatory action and, therefore, was 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.

### III. Executive Order 13563

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD has determined that this rule is not excessively burdensome to the public. It is consistent with DoD's requirement to ensure the safety and health of its military and civilian personnel to the maximum extent practicable.

### IV. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The rule affects contractors with contracts, including task and delivery orders, in support of current and future military operations for construction, installation, repair, maintenance, or operation of facilities. This includes contracts for facilities, infrastructure, and equipment configured for occupancy, including but not limited to, existing host nation facilities, new construction, and relocatable buildings.

Contracts will require compliance with the Unified Facilities Criteria (UFC) 1-200-01 to meet generally accepted standards for fire protection, structural integrity, electrical systems, plumbing, water treatment, waste disposal, and telecommunications networks. Facilities, infrastructure, and equipment shall be inspected prior to use to ensure safety and habitability.

Military operations affected by this rule are those outside the United States, Guam, Puerto Rico, and the Virgin Islands.

Contract support for recent military operations has been provided primarily by the Department of Army's LOGCAP contracts, which were awarded to large businesses. There are high costs associated with a company being able to perform in the geographic regions where

most military operations are currently taking place. This makes it unlikely that a small business could afford to sustain the infrastructure required to perform these types of services in locations such as Iraq and Afghanistan. Small business preferential programs under FAR part 19 may not apply to these contracts as they only apply to contracts placed in the United States or its outlying areas. DoD invited comments when the interim rule was published on October 29, 2010 (75 FR 66683). No comments were received. Based on the above factors, the number of small business firms to which the rule would apply is expected to be minimal.

#### **V. Paperwork Reduction Act**

The rule does not impose additional information collection requirements that require the approval of the Office of

Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 246 and 252**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

#### **Interim Rule Adopted as Final Without Change**

Accordingly, the interim rule amending 48 CFR parts 246 and 252, which was published at 75 FR 66683 on October 29, 2010, is adopted as a final rule without change.

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