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**FOR FURTHER INFORMATION CONTACT:** Mr. Dustin Pitsch, telephone 703 602-0289.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This interim rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 215.3, Source Selection. It amends DFARS 215.304(c) by adding paragraph (iv) to state that the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors shall be considered as a part of the source selection process for major defense acquisition programs.

**II. Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This 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. Regulatory Flexibility Act**

DoD has performed an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The interim rule will apply to DoD Major Defense Acquisition Program contractors and subcontractors. As such, it is not expected that this rule will have a significant impact on a significant number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows.

This interim rule amends the DFARS to implement section 812 of the National Defense Authorization Act for FY 2011 (Pub. L. 111-383) (10 U.S.C. 2430 note). Section 812(b)(5) requires appropriate consideration of the manufacturing readiness and manufacturing readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

The rule will apply to DoD Major Defense Acquisition Program contractors and subcontractors. Most major defense acquisition programs are awarded to large concerns as they are of a scope too large for any small business to perform. As such, it is not expected that this rule will have a significant impact on a significant number of small entities.

The interim rule imposes no reporting, recordkeeping, or other information collection requirements. The proposed rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule that would meet the requirements of the statute.

DoD invites comments from small businesses 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. 601. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011-D031) in correspondence.

**IV. Paperwork Reduction Act**

The rule does not impose any 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).

**V. 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 812 of the National Defense Authorization Act for Fiscal Year 2011, enacted on January 7, 2011. Section 812 requires implementation within 180 days, by July 6, 2011, and an interim rule is required to meet the implementation date. This action is necessary in order to require contracting officers to consider the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs. 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 215**

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 215 is amended as follows:

**PART 215—CONTRACTING BY NEGOTIATION**

■ 1. The authority citation for 48 CFR part 215 continues to read as follows:

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

■ 2. Amend section 215.304 by adding paragraph (c)(iv) to read as follows:

**215.304 Evaluation factors and significant subfactors.**

(c) \* \* \*

(iv) In accordance with section 812 of the National Defense Authorization Act for Fiscal Year 2011, consider the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

**RIN 0750-AG93**

**Defense Federal Acquisition Regulation Supplement; Definition of Sexual Assault (DFARS Case 2010-D023)**

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule to the Defense Federal Acquisition Regulation Supplement (DFARS) to ensure contractor employees accompanying U.S. Armed Forces are made aware of the DoD definition of sexual assault as defined in DoD Directive 6495.01, Sexual Assault Prevention and Response Program, and that many of the offenses addressed in the definition are covered under the Uniform Code of Military Justice. Further, sexual assault offenses in the definition, which are not covered by the Uniform Code of Military Justice, may nevertheless have consequences to contractor employees under DFARS

clause 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

**DATES:** *Effective date:* June 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Julian Thrash, 703–602–0310.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD Inspector General audit D–2010–052, entitled “Efforts to Prevent Sexual Assault/Harassment Involving DoD Contractors During Contingency Operations,” dated April 16, 2010, provided recommendations for the Under Secretary of Defense for Acquisition, Technology, and Logistics to develop requirements in all DoD contracts supporting contingency operations to ensure contractor employees accompanying U.S. Armed Forces are aware of the definition of “sexual assault.”

A proposed rule was published in the **Federal Register** at 75 FR 73997, on November 30, 2010. That rule proposed adding at DFARS 252.225–7040(d)(3) a new requirement for compliance with laws and regulations. The proposed change required the contractor to ensure that contractor employees accompanying U.S. Armed Forces be aware of the DoD definition of “sexual assault” as defined in DoD Directive (DoDD) 6495.01, “Sexual Assault Prevention and Response Program.” The rule also proposed to also inform contractor employees accompanying U.S. Armed Forces, that such offenses in the definition are covered under the Uniform Code of Military Justice, Title 10, Chapter 47 (<http://www.constitution.org/mil/ucmj19970615.htm>). DoDD 6495.01, “Sexual Assault Prevention and Response Program,” is available at <http://www.dtic.mil/whs/directives/corres/pdf/649501p.pdf>.

**II. Discussion and Analysis**

*A. Public Comments*

Two respondents submitted positive comments in response to the proposed rule. These respondents supported DoD’s inclusion of the reference to this definition in the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

*B. Other Changes*

DoD revised the final rule to—  
—Clarify that many of the offenses addressed in the DoDD 6495.01, “Sexual Assault Prevention and Response Program,” definition of sexual assault are covered under the

Uniform Code of Military Justice with a reference to paragraph (e)(2)(iv) of the clause; and

—Require contractors to provide awareness to contractor employees that sexual assault offenses in the definition, which are not covered by the Uniform Code of Military Justice, may nevertheless have consequences to contractor employees under DFARS clause 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, paragraph (h)(1).

**III. Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This 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.

**IV. Regulatory Flexibility Act**

DoD certifies that this final rule will not have significant economic impact on a substantial number of small entities within the meaning for the Regulatory Flexibility Act, 5 U.S.C. 604, *et seq.*, because the rule does not impose any additional significant requirements on small businesses.

This DFARS rule requires contractors to ensure their employees are aware of the DoD definition of sexual assault contained in DoDD 6495, Sexual Assault Prevention and Response Program, and how that definition relates to existing contractual conditions, i.e., many of the offenses addressed in the definition are covered under the Uniform Code of Military Justice. DFARS 252.225–7040(e)(2)(iv) previously informed contractors that contractor personnel authorized to accompany U.S. Armed Forces in the field are subject to the jurisdiction of the Uniform Code of Military Justice. Offenses in the definition, which are not covered by the Uniform Code of Military Justice, may nevertheless have consequences to contractor employees under DFARS clause 252.225–7040, Contractor Personnel Authorized to Accompany

U.S. Armed Forces Deployed Outside the United States, paragraph (h)(1).

A proposed rule published in the **Federal Register** at 75 FR 73997, on November 30, 2010, invited comments from small businesses, and other interested parties. No comments were received from small entities on the affected DFARS subpart with regard to small businesses.

**V. Paperwork Reduction Act**

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 chapter 35).

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 252 is amended as follows:

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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

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

■ 2. Amend section 252.225–7040 by adding paragraph (d)(3) to read as follows:

**252.225–7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States**

\* \* \* \* \*

(d) \* \* \*

(3) The Contractor shall ensure that contractor employees accompanying U.S. Armed Forces are aware—

(i) Of the DoD definition of “sexual assault” in DoDD 6495.01, Sexual Assault Prevention and Response Program;

(ii) That many of the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause); and

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

\* \* \* \* \*

(End of clause)

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