

**252.203–7004 Display of fraud hotline poster(s).**

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(b) \* \* \*

(1) The Contractor shall display prominently in common work areas within business segments performing work in the United States under Department of Defense (DoD) contracts DoD hotline posters prepared by the DoD Office of the Inspector General. DoD hotline posters may be obtained via the Internet at [http://www.dodig.mil/HOTLINE/hotline\\_posters.htm](http://www.dodig.mil/HOTLINE/hotline_posters.htm).

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**252.227–7037 [Amended]**

■ 13. Section 252.227–7037 is amended—

■ a. By removing the clause date “(APR 2012)” and adding “(JUN 2012)” in its place;

■ b. In paragraph (e)(3), by removing “the Contract Disputes Act of 1978 (41 U.S.C. 7101)” and adding “41 U.S.C. 7101, Contract Disputes” in its place; and

■ c. In paragraph (g)(2)(iv), removing “Act” and adding “statute” in its place.

**252.227–7038 [Amended]**

■ 14. Section 252.227–7038 is amended by removing the clause date “(DEC 2007)” and adding “(JUN 2012)” in its place and in paragraph (l)(2)(ii), by removing “Act” and adding “statute” in its place.

**252.247–7023 [Amended]**

■ 15. Section 252.247–7023 introductory text is amended by removing “As prescribed in 247.573(b)(1)” and adding “As prescribed in 247.574(b)(1)”.

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 202**

RIN 0750–AH81

**Defense Federal Acquisition Regulation Supplement: Contracting Activity Updates (DFARS Case 2012–D045)**

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the definitions of

“contracting activity” and “departments and agencies” found at DFARS subpart 202.101.

**DATES:** *Effective Date:* January 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lesa Scott, telephone 571–372–6104.

**SUPPLEMENTARY INFORMATION:****I. Background**

This final rule updates the list of contracting activities and moves the list to the DFARS Procedures, Guidance, and Instruction (PGI) at 202.101. The reorganization of DFARS 202.101 will facilitate the rapid updating of contracting activities as organizational changes occur. This final rule—

- Revises the definition of “contracting activity” at DFARS 202.101 by removing the list of contracting activities;

- Inserts a pointer at DFARS 202.101 to direct readers to PGI 202.101 for the list of contracting activities that have been delegated broad authority regarding acquisition functions;

- Adds the updated list of contracting activities to the PGI at 202.101; and

- Updates the definition of “departments and agencies.”

**II. Publication of This Final Rule for Public Comment Is Not Required by Statute**

“Publication of proposed regulations,” 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it merely updates and moves the list of contracting activities from DFARS 202.101, Definitions, to a new DFARS PGI section at 202.101, Definitions. These requirements affect only the internal operating procedures of the Government.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 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**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

**V. Paperwork Reduction Act**

The rule does not contain 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).

**List of Subjects in 48 CFR Part 202**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 202 is amended as follows:

**PART 202—DEFINITIONS OF WORDS AND TERMS**

■ 1. The authority citation for 48 CFR part 202 continues to read as follows:

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

■ 2. Section 202.101 is amended by—

■ a. Revising the “contracting activity” definition; and

■ b. Revising the “departments and agencies” definition.

The revisions read as follows:

**202.101 Definitions.**

\* \* \* \* \*

*Contracting activity* for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are listed at PGI 202.101.

\* \* \* \* \*

*Departments and agencies*, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine

Corps is a part of the Department of the Navy). The defense agencies are the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Contract Management Agency, the Defense Finance and Accounting Service, the Defense Information Systems Agency, the Defense Intelligence Agency, the Defense Logistics Agency, the Defense Security Cooperation Agency, the Defense Security Service, the Defense Threat Reduction Agency, the Missile Defense Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the United States Special Operations Command, and the United States Transportation Command.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 204, 215, 217, 219, 225, 239, 241, 242, and 252

RIN 0750-AH49

#### Defense Federal Acquisition Regulation Supplement: Definition of Cost or Pricing Data (DFARS Case 2011-D040)

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update the text to reflect the distinction between “certified cost or pricing data” and “data other than certified cost or pricing data.” The DFARS changes are necessary to ensure consistency with the Federal Acquisition Regulation (FAR) which had been amended to clarify the distinction between those terms, as well as the requirements for the submission of cost or pricing data.

**DATES:** December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, telephone 571-372-6099.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published a proposed rule in the *Federal Register* at 77 FR 2680 on January 19, 2012. The comment period closed on March 19, 2012. This final rule updates the DFARS for consistency

with FAR changes addressing the definition of cost or pricing data which clarified the distinction between “certified cost or pricing data” and “data other than certified cost or pricing data,” as well as the requirements for the submission of cost or pricing data (75 FR 53135, August 30, 2010).

##### II. Discussion and Analysis

Two respondents submitted comments. One respondent supported the rule without further comment, and the second respondent’s comment was non-substantive. Therefore, the DFARS is revised as proposed.

##### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 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 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 rule merely aligns the DFARS with the FAR. However, a final regulatory flexibility analysis has been performed consistent with 5 U.S.C. 604. This rule amends the DFARS to update the text addressing the definition of cost or pricing data by inserting the word “certified” in front of “cost or pricing data.” The DFARS changes are necessary to ensure consistency with the FAR. The rule does not expand or diminish the existing rights of the contracting officer to obtain cost data or pricing data. Instead, this rule will benefit all entities, both large and small, by clarifying the requirements for the submission of “certified cost or pricing data” and “data other than certified cost or pricing data.” No comments were received in response to the initial regulatory flexibility analysis published with the proposed rule on January 19, 2012. No comments were filed by the Chief Counsel for Advocacy of the Small

Business Administration in response to the rule. The rule does not require any reporting, recordkeeping, or other compliances, or compel contractors to expend significant effort or cost. No known significant alternatives to the rule have been identified. A copy of the analysis may be obtained from the point of contact specified herein.

##### V. Paperwork Reduction Act

The rule does not contain 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).

#### List of Subjects in 48 CFR Parts 204, 215, 217, 219, 225, 239, 241, 242, and 252

Government procurement.

#### Manuel Quinones,

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD amends 48 CFR parts 204, 215, 217, 219, 225, 239, 241, 242, 244, and 252 as follows:

■ 1. The authority citation for 48 CFR parts 204, 215, 217, 219, 225, 239, 241, 242, and 252 continues to read as follows:

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

#### PART 204—ADMINISTRATIVE MATTERS

##### 204.805 [Amended]

■ 2. Section 204.805 is amended in paragraph (5) by removing “subject to cost or pricing data” and adding “subject to certified cost or pricing data” in its place.

#### PART 215—CONTRACTING BY NEGOTIATION

■ 3. Section 215.403 is amended by revising the section heading to read as follows:

##### 215.403 Obtaining certified cost or pricing data.

##### 215.403-1 [Amended]

■ 4. Section 215.403-1 is amended by—

■ a. In paragraph (b) and the heading of paragraph (c) removing “*cost or pricing data requirements*” and adding “*certified cost or pricing data requirements*” in its place;

■ b. In paragraph (c)(4)(C) and the introductory text of paragraph (c)(4)(D) removing “cost or pricing data” and adding “certified cost or pricing data” in its place;

■ c. In paragraph (c)(4)(D)(1) removing “information other than cost or pricing