

Flexibility Act, 5 U.S.C. 601, *et seq.*, because this final rule eliminates the DFARS changes made in the interim rule, as a result of recent changes to the FAR pertaining to payment by EFT.

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 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continue to read as follows:

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

PART 232—CONTRACT FINANCING

Subpart 232.11—[Removed]

2. Subpart 232.11 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232–7009 [Removed]

3. Section 252.232–7009 is removed.

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DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 98–D306]

Defense Federal Acquisition Regulation Supplement; Manufacturing Technology Program

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 213 of the Strom Thurmond National Defense Authorization Act of Fiscal Year 1999. Section 213 requires that, for each contract entered into on a cost-sharing basis under the Manufacturing Technology Program, the ratio of contract recipient cost to Government

cost must be determined by competitive procedures.

DATES: *Effective date:* April 16, 1999.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before June 15, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 98–D306 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98–D306 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS guidance concerning the Manufacturing Technology Program to implement Section 213 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Act 105–261). Section 213 amends 10 U.S.C. 2525(d) to require that, for each contract entered into on a cost-sharing basis under the Manufacturing Technology Program, the ratio of contract recipient cost to Government cost must be determined by competitive procedures; and that the Secretary of Defense may delegate the authority to approve use of other than a cost-sharing contract under the Program only to the Under Secretary of Defense (Acquisition and Technology) of a service acquisition executive. On January 9, 1999, the Secretary of Defense delegated this authority to the Under Secretary of Defense (Acquisition and Technology).

The rule also removes guidance from DFARS 235.006 pertaining to the Manufacturing Technology Program, as the guidance has been relocated to a new section at 235.006–70; and removes obsolete language from 235.006 pertaining to prior years' appropriations acts.

B. Regulatory Flexibility Act

This interim rule is not expected 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 only new requirement for offerors or contractors is a requirement for the inclusion of a cost-sharing ratio

in proposals for contracts under the Manufacturing Technology Program. This change is not expected to significantly alter the procedures for award of contracts under the Manufacturing Technology Program, as the DFARS already requires the use of cost-sharing arrangements and competitive procedures for contracts under the Program. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98–D306 in correspondence.

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 this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 213 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261) pertaining to the Manufacturing Technology Program. Section 213 became effective on October 17, 1998. Comments received in response to the publication of this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 235

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 235 is amended as follows:

1. The authority citation for 48 CFR Part 235 continues to read as follows:

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

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. Section 235.006 is revised to read as follows:

235.006 Contracting methods and contract type.

(b)(i) Do not award a fixed-price type contract for a development program effort unless—

(A) The level of program risk permits realistic pricing;

(B) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(C) A written determination that the criteria of paragraphs (b)(i)(A) and (B) of this section have been met is executed—

(1) By the Under Secretary of Defense (Acquisition and Technology) (USD (A&T)) for—

(i) Research and development for non-major systems, if the contract is over \$25 million;

(ii) The lead ship of a class; or

(iii) The development of a major system (as defined in FAR 2.101) or subsystem thereof, if the contract is over \$25 million; or

(2) By the contracting officer for any development not covered by paragraph (b)(i)(C)(1) of this section.

(ii) Obtain USD (A&T) approval of the Government's prenegotiation position before negotiations begin, and obtain USD (A&T) approval of the negotiated agreement with the contractor before the

agreement is executed, for any action that is—

(A) An increase of more than \$250 million in the price or ceiling price of fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(B) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is \$100 million or more; or

(C) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class that increases the price or ceiling price by more than \$250 million for equivalent quantities.

(iii) Notify the USD (A&T) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

3. Section 235.006–70 is added to read as follows:

235.006–70 Manufacturing Technology Program

(a) This subsection implements 10 U.S.C. 2525(d).

(b) Award all contract under the Manufacturing Technology Program (see

DoDI 4200.15, Manufacturing Technology Program) using competitive procedures.

(c)(1) Use a cost-sharing arrangement (see FAR 16.303) for contracts awarded under the Manufacturing Technology Program, unless the USD (A&T) makes a determination that the contract is for a program that—

(i) Is not likely to have any immediate and direct commercial application;

(ii) Is of sufficiently high risk to discourage cost sharing by non-Federal Government sources; or

(iii) Will be carried out by an institution of higher education.

(2) Document the contract file with the rationale for any determination made in accordance with paragraph (c)(1) of this subsection.

(d) For each contract entered into on a cost-sharing basis, determine the ratio of contractor cost to Government cost by competitive procedures, i.e., each offeror must propose the ratio as part of its proposal. If only one offer is received, negotiate the ratio that provides the best value to the Government.

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