

update activity names and addresses and reference numbers.

**EFFECTIVE DATE:** December 6, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

**List of Subjects in 48 CFR Parts 202, 215, and 242**

Government procurement.

**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 202, 215, and 242 are amended as follows:

1. The authority citation for 48 CFR Parts 202, 215, and 242 continues to read as follows:

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

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

**202.101 [Amended]**

2. Section 202.101 is amended in the definition of “Contracting activity”, under the heading “ARMY”, by removing the entry “Troop Support Agency”.

**PART 215—CONTRACTING BY NEGOTIATION**

**215.404-71-3 [Amended].**

3. Section 215.404-71-3 is amended in paragraph (e)(3), in the second sentence, by removing “75” and “25” and adding in their place “80” and “20”, respectively.

4. Section 215.404-76 is amended in paragraph (b) by revising the table to read as follows:

**215.404-76 Reporting profit and fee statistics.**

\* \* \* \* \*

(b) \* \* \*

Contracting office	Designated office
ARMY	
All .....	U.S. Army Contracting Support Agency, ATTN: SARD-RS, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041-3201.

Contracting office	Designated office
NAVY	
All .....	Commander, Fleet and Industrial Supply Center, Norfolk, Washington Detachment, Code 402, Washington Navy Yard, Washington, DC 20374-5000.
AIR FORCE	
Air Force Materiel Command (all field offices).	Air Force Materiel Command, 645 CCSG/SCOS, ATTN: J010 Clerk, 2721 Sacramento Street, Wright-Patterson Air Force Base, OH 45433-5006.

**PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

**242.202 [Amended]**

5. Section 242.202 is amended in paragraph (e)(1)(A) in the first sentence, in the parenthetical, by removing “www” and adding in its place “home”.

**242.302 [Amended]**

6. Section 242.302 is amended in paragraph (a)(13)(B)(1) in the last parenthetical by removing “www” and adding in its place “home.”

[FR Doc. 01-30263 Filed 12-5-01; 8:45 am]

BILLING CODE 5000-04-U

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 212 and 237**

**[DFARS Case 2000-D306]**

**Defense Federal Acquisition Regulation Supplement; Performance-Based Contracting Using Federal Acquisition Regulation Part 12 Procedures**

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 821(b) of the National Defense Authorization Act for Fiscal Year 2001. Section 821(b) permits DoD to treat certain performance-based service contracts and task orders as contracts for the procurement of commercial items.

**DATES:** *Effective date:* December 6, 2001.

**Comment date:** Comments on the interim rule should be submitted to the address shown below on or before February 4, 2002, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil). Please cite DFARS Case 2000-D306 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2000-D306.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Haberlin, (703) 602-0289.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule amends DFARS Part 212, Acquisition of Commercial Items, and DFARS Part 237, Service Contracting, to implement Section 821(b) of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398).

Section 821(b) of Public Law 106-398 establishes an incentive for the use of performance-based service contracts. Section 821(b) permits a contracting officer to use the same procedures used for the acquisition of commercial items under Part 12 of the Federal Acquisition Regulation (FAR) for a performance-based service contract or task order, if certain conditions are met. These conditions include—

1. The contract or task order must—
  - (a) Be firm-fixed-price;
  - (b) Have a value of \$5 million or less;
  - (c) Set forth specifically each task to be performed;
  - (d) Define each task in measurable, mission-related terms; and
  - (e) Identify the specific end products or output to be achieved for each task;
2. The contractor must provide similar services at the same time to the general public under terms and conditions similar to those in the contract or task order; and
3. The procedures in FAR Subpart 13.5, Test Program for Certain Commercial Items, must not be used.

Since procurements undertaken pursuant to the authority of Section

821(b) will be conducted under FAR Part 12, the clauses at FAR 52.212-4 and 52.212-5 will be incorporated into resulting contracts. In this regard, when soliciting offers, contracting officers may need to modify paragraph (a) of the provision at 52.212-4 in particular, addressing inspection and acceptance, as may be necessary to ensure the contract's remedies adequately protect the Government's interests. For example, contracting officers may wish to negotiate the inclusion of commercial remedies such as extension of contract performance or the right to reduce the contract price to reflect the reduced value of the services performed when defects in services cannot be corrected by reperformance.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. 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 pertains only to those small entities that will be awarded performance-based service contracts or task orders meeting the conditions specified in the rule. Therefore, DoD has not prepared an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000-D306.

### 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 an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 821(b) of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). Section 821(b) establishes an incentive for the use of performance-based service contracts by permitting DoD to treat a performance-based service contract as a contract for

the procurement of commercial items if certain conditions are met. Section 821(b) became effective on October 30, 2000, and the contracting authority provided under that section expires on October 30, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Parts 212 and 237

Government procurement.

**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 212 and 237 are amended as follows:

1. The authority citation for 48 CFR Parts 212 and 237 continues to read as follows:

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

### PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Subpart 212.1 is added to read as follows:

#### Subpart 212.1—Acquisition of Commercial Items—General

Sec.

212.102 Applicability.

212.102 Applicability.

(a)(i) In accordance with Section 821 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398), the contracting officer also may use FAR part 12 for any performance-based contracting for services if the procedures in FAR Subpart 13.5 are not used, and the contract or task order—

(A) Is entered into on or before October 30, 2003;

(B) Has a value of \$5 million or less;

(C) Meets the definition of performance-based contracting at FAR 2.101;

(D) Uses quality assurance surveillance plans;

(E) Includes performance incentives where appropriate;

(F) Specifies a firm-fixed price; and

(G) Is awarded to an entity that provides similar services at the same time to the general public under terms and conditions similar to those in the contract.

(ii) In exercising the authority specified in paragraph (a)(i) of this section, the contracting officer should modify paragraph (a) of the clause at FAR 52.212-4 as may be necessary to ensure the contract's remedies adequately protect the Government's interests.

### PART 237—SERVICE CONTRACTING

3. Subpart 237.6 is added to read as follows:

#### Subpart 237.6—Performance-Based Contracting

Sec.

237.601 General.

237.601 General.

See 212.102 for the use of FAR part 12 procedures with performance-based contracting.

[FR Doc. 01-30262 Filed 12-5-01; 8:45 am]

**BILLING CODE 5000-04-U**

### DEPARTMENT OF DEFENSE

#### 48 CFR Part 217

[DFARS Case 2000-D303/304]

#### Defense Federal Acquisition Regulation Supplement; Multiyear Contracting

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 802 and 806 of the National Defense Authorization Act for Fiscal Year 2001. Sections 802 and 806 amend requirements pertaining to multiyear contracting.

**EFFECTIVE DATE:** December 6, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Haberman, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2000-D303/304.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 802 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398) relocated provisions relating to multiyear contracts for services from 10 U.S.C. 2306(g) to a new 10 U.S.C. 2306c. Section 806 of Public Law 106-398 amended 10 U.S.C. 2306b to add reporting requirements pertaining to multiyear contracts for property. This final rule updates DFARS Subpart 217.1 to reflect current statutory requirements pertaining to multiyear contracts.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.