

comment on how we might reduce this carrier cost, including such costs for small entities.

#### 6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

68. None.

### III. Ordering Clauses

69. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, this Notice of Proposed Rulemaking is adopted.

70. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–12830 Filed 6–7–04; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF DEFENSE

### 48 CFR Part 212

[DFARS Case 2003–D074]

#### Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items

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

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

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the acquisition of commercial items. This proposed rule is a result of an initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 9, 2004, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003–D074, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003–D074 in the subject line of the message.

- Fax: (703) 602–0350.

- Mail: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teresa Brooks, (703) 602–0326.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes—

- Delete unnecessary text pertaining to structuring of contracts at DFARS 212.303; and
- Update a FAR reference at DFARS 212.503(c)(ii).

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 deletes unnecessary

text pertaining to structuring of contracts and updates reference information, but makes no significant change to contracting policy. Therefore, DoD has not performed 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 2003–D074.

#### 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 Part 212

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR part 212 as follows:

1. The authority citation for 48 CFR part 212 continues to read as follows:

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

#### PART 212—ACQUISITION OF COMMERCIAL ITEMS

##### 212.303 [Removed]

2. Section 212.303 is removed.

##### 212.503 [Amended]

3. Section 212.503 is amended in paragraph (c)(ii) by revising the parenthetical to read “(see FAR 15.403–1(b)(3))”.

[FR Doc. 04–12937 Filed 6–7–04; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 225 and 252

[DFARS Case 2004–D001]

#### Defense Federal Acquisition Regulation Supplement; Reporting Contract Performance Outside the United States

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

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

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements for reporting of

contract performance outside the United States. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 9, 2004, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2004–D001, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2004–D001 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0328.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dp/dars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes clarify requirements for reporting of contract performance outside the United States; and establish two separate contract clauses to eliminate confusion between two

reporting requirements presently contained in one clause.

DFARS Subpart 225.72, Reporting Contract Performance Outside the United States, implements: (1) DoD policy for contractor reporting of performance outside the United States under contracts exceeding \$500,000; and (2) requirements of 10 U.S.C. 2410g for offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada, when the contract exceeds \$10 million and could be performed inside the United States or Canada.

This proposed rule revises DFARS Subpart 225.72, and the corresponding solicitation provision and contract clauses, to clarify the two separate reporting requirements. In addition, the proposed rule removes text from DFARS 225.7202 related to contracting officer distribution of reports. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A proposed rule describing the purpose and structure of PGI was published at 69 FR 8145 on February 23, 2004.

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 clarifies existing reporting requirements, with no substantive change to those requirements. Therefore, DoD has not performed 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 2004–D001.

**C. Paperwork Reduction Act**

The proposed rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The existing information collection requirements in DFARS Subpart 225.72 have been approved by OMB under Control Number 0704–0229.

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

Government procurement.

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

Therefore, DoD proposes to amend 48 CFR Parts 225 and 252 as follows:

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

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

**PART 225—FOREIGN ACQUISITION**

2. Section 225.7200 is revised to read as follows:

**225.7200 Scope of subpart.**

This subpart addresses—

(a) The requirements of 10 U.S.C. 2410g for offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada when the contract could be performed inside the United States or Canada; and

(b) DoD requirements for contractor reporting of the volume, type, and nature of contract performance outside the United States.

3. Sections 225.7202 and 225.7203 are revised to read as follows:

**§ 225.7202 Contracting officer distribution of reports.**

Follow the procedures at PGI 225.7202 for distribution of reports submitted with offers in accordance with the provision at 252.225–7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer.

**§ 225.7203 Solicitation provision and contract clause.**

Except for acquisitions described in 225.7201—

(a) Use the provision at 252.225–7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, in solicitations with a value exceeding \$10 million;

(b) Use the clause at 252.225–7004, Immediate Reporting of Intended Contract Performance Outside the United States and Canada, in solicitations and contracts with a value exceeding \$10 million; and

(c) Use the clause at 252.225–7XXX, Quarterly Reporting of Contract Performance Outside the United States, in solicitations and contracts with a value exceeding \$500,000.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 252.225–7003 and 252.225–7004 are revised to read as follows:

### § 252.225–7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.

As prescribed in 225.7203(a), use the following provision:

#### Report of Intended Performance Outside the United States and Canada—Submission With Offer (XXX 2004)

(a) The offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if—

(1) The offer exceeds \$10 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds \$500,000 in value; and  
(ii) Could be performed inside the United States or Canada.

(b) Information to be reported includes that for—

(1) Subcontracts;  
(2) Purchases; and  
(3) Intracompany transfers when transfers originate in a foreign location.

(c) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or  
(2) A computer-generated report that contains all information required by DD Form 2139.

(d) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at <http://web1.whs.osd.mil/icdhome/forms.htm>.

(End of provision)

### 252.225–7004 Immediate Reporting of Intended Contract Performance Outside the United States and Canada.

As prescribed in 225.7203(b), use the following clause:

### Immediate Reporting of Intended Contract Performance Outside the United States and Canada (XXX 2004)

(a) *Reporting requirement.* The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that—

(1) Exceeds \$500,000 in value; and  
(2) Could be performed inside the United States or Canada.

(b) *Submission of reports.* The Contractor—  
(1) Shall submit a report as soon as the information is known;

(2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(3) Need not resubmit information submitted with its offer, unless the information changes;

(4) Shall submit all reports to the Contracting Officer; and

(5) Shall submit a copy of each report to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301–3060.

(c) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or  
(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at <http://web1.whs.osd.mil/icdhome/forms.htm>.

(End of clause)

5. Section 252.225–7XXX is added to read as follows:

### 252.225–7XXX Quarterly Reporting of Contract Performance Outside the United States.

As prescribed in 225.7203(c), use the following clause:

### Quarterly Reporting of Contract Performance Outside the United States (XXX 2004)

(a) *Reporting requirement.* Except as provided in paragraph (b) of this clause, within 10 days after the end of each quarter of the Government's fiscal year, the Contractor shall report any subcontract, purchase, or intracompany transfer that—

(1) Will be or has been performed outside the United States;

(2) Exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(3) Has not been identified in a report for a previous quarter.

(b) *Exception.* Reporting under this clause is not required if—

(1) A foreign place of performance is the principal place of performance; and

(2) The Contractor specified the foreign place of performance in the Place of Performance provision of its offer.

(c) *Submission of reports.* The Contractor shall submit the reports required by this clause to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301–3060.

(d) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at <http://web1.whs.osd.mil/icdhome/forms.htm>.

(e) *Subcontracts.* The Contractor—

(1) Shall include the substance of this clause in all first-tier subcontracts exceeding \$500,000, except those for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence; and

(2) Shall provide the number of this contract to its subcontractors required to submit reports under this clause.

(End of clause)

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