

issuance of the solicitation and the associated technical data package to United States and Canadian firms.

DoD does not agree with the recommended change. A company located in the United States or Canada could fall within the definition of a Communist Chinese military company if it is owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China. Also, the prohibition applies to subcontracts as well as contracts. An item of critical military technology could contain a subcontracted component that is not subject to the same controls as the end item, but is on the USML. Therefore, the contracting officer needs the specified notification from the requirements activity to identify all USML items and to ensure that the clause at DFARS 252.225-7007 is included in solicitations and contracts for those items.

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 certifies that this final rule will not 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 affects only those entities that are a part of the industrial base of the People's Republic of China or that are owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

#### 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 225 and 252

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

#### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Parts 225 and 252, which was published at 71 FR 53045 on September 8, 2006, is adopted as a final rule without change.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 232 and 252

RIN 0750-AF28

#### Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests (DFARS Case 2005-D009)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update policy addressing requirements for DoD contractors to submit payment requests in electronic form. The rule clarifies the situations under which DoD will grant exceptions to requirements for electronic submission of payment requests.

**EFFECTIVE DATE:** March 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. John McPherson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0296; facsimile (703) 602-0350. Please cite DFARS Case 2005-D009.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends DFARS Subpart 232.70 and the corresponding contract clause at 252.232-7003 to clarify the situations under which DoD will grant exceptions to requirements for electronic submission of payment requests.

DoD published a proposed rule at 71 FR 14149 on March 21, 2006. Two sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* One respondent recommended expansion of the DFARS text that permits the administrative contracting officer to authorize submission of a non-electronic payment request, to also provide this authority to the procuring contracting officer. The respondent stated that the expansion is necessary to identify authorized officials for contracts that are not administered by the Defense Contract Management Agency.

*DoD Response:* DoD agrees that this authority belongs to the contracting officer administering the contract.

However, there may be several contracting officers providing administrative support for a contract. Therefore, DoD has revised the rule to make this approval the responsibility of the contracting officer administering the contract for payment.

2. *Comment:* One respondent stated there should be a distinction between the requirement for contractors to submit payment requests in electronic form and the requirement for DoD procurement officials to process supporting documents in electronic form.

*DoD Response:* It is DoD policy for all required documentation to be submitted and processed in electronic form to facilitate the payment process. DoD believes the DFARS rule implements this policy and has made no related changes regarding this requirement in the final rule.

3. *Comment:* One respondent recommended limiting the alternative payment request methods to conventional mail or facsimile. The respondent pointed out that each new alternative method of submission requires the establishment of business rules to properly monitor payment requests and to ensure timely payment. In addition, submission by methods such as e-mail will require the printing and scanning of documents and will increase the workload of the payment office.

*DoD Response:* The final rule includes changes that limit the alternative payment request methods to conventional mail or facsimile. DoD recognizes that the Defense Finance and Accounting Service (DFAS) has established procedures with adequate controls for the paper and facsimile submission process to ensure prevention of duplicate payments and to provide an adequate audit trail. E-mail submission is not viable at this time, because DFAS presently does not have procedures in place to process such submissions and to maintain sufficient process control.

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 certifies that this final rule will not 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 is designed to avoid any such impact by permitting alternative means of requesting payment when submission of electronic payment

requests would be unduly burdensome to a contractor.

### 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,

Editor, Defense Acquisition Regulations System.

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

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

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

### PART 232—CONTRACT FINANCING

■ 2. Section 232.7002 is revised to read as follows:

#### 232.7002 Policy.

(a) Contractors shall submit payment requests in electronic form, except for—

(1) Purchases paid for with a Governmentwide commercial purchase card;

(2) Awards made to foreign vendors for work performed outside the United States;

(3) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified information or national security;

(4) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(8), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies;

(5) Purchases to support unusual or compelling needs of the type described in FAR 6.302-2;

(6) Cases in which DoD is unable to receive payment requests in electronic form; or

(7) Cases in which the contracting officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the contractor.

(b) DoD officials receiving payment requests in electronic form shall process the payment requests in electronic form. Any supporting documentation necessary for payment, such as receiving reports, contracts, contract modifications, and required certifications, also shall be processed in electronic form. Scanned documents are acceptable forms for processing supporting documentation.

(c) When payment requests will not be submitted in electronic form—

(1) Payment requests shall be submitted by facsimile or conventional mail. The contracting officer shall consult with the payment office and the contract administration office regarding the method of payment request to be used; and

(2) Section G of the contract shall specify the method of payment request.

#### 232.7003 [Amended]

■ 3. Section 232.7003 is amended in paragraph (a)(3) by removing “<http://www.dod.mil/dfas/>” and adding in its place “<http://www.dod.mil/dfas/contractorpay/electroniccommerce.html>”.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.232-7003 is amended as follows:

■ a. By revising the clause date and paragraphs (b)(3)(ii) and (c);

■ b. By redesignating paragraph (d) as paragraph (e); and

■ c. By adding a new paragraph (d) to read as follows:

#### 252.232-7003 Electronic Submission of Payment Requests.

\* \* \* \* \*

#### ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (MAR 2007)

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) EDI implementation guides are available on the Internet at <http://www.dod.mil/dfas/contractorpay/electroniccommerce.html>.

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(c) The Contractor may submit a payment request in non-electronic form only when—

(1) DoD is unable to receive a payment request in electronic form; or

(2) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Contracting Officer's determination with each request for payment.

(d) The Contractor shall submit any non-electronic payment requests using the

method or methods specified in Section G of the contract.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

RIN 0750-AF49

#### Defense Federal Acquisition Regulation Supplement; Free Trade Agreements—Guatemala and Bahrain (DFARS Case 2006-D028)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the United States-Bahrain Free Trade Agreement and the Dominican Republic-Central America-United States Free Trade Agreement with respect to Guatemala. The Free Trade Agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials and specify procurement procedures designed to ensure fairness.

**EFFECTIVE DATE:** March 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2006-D028.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 71 FR 58541 on October 4, 2006, to implement the Dominican Republic-Central America-United States Free Trade Agreement, with respect to Guatemala, and the United States-Bahrain Free Trade Agreement. The rule amended the appropriate DFARS provisions and clauses to reflect the addition of Guatemala and Bahrain as Free Trade Agreement countries.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under