

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 212**

RIN 0750-AF93

Defense Federal Acquisition Regulation Supplement; Extension of Authority To Carry Out Certain Prototype Projects (DFARS Case 2008-D008)

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 implement Section 823 of the National Defense Authorization Act for Fiscal Year 2008. Section 823 provides a 5-year extension of the authority for DoD to carry out a pilot program for transition to follow-on contracting after use of other transaction authority.

EFFECTIVE DATE: April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Felisha Hitt, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0310; facsimile 703-602-7887. Please cite DFARS Case 2008-D008.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule implements Section 823 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 823 amended Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (as amended by Section 847 of the National Defense Authorization Act for Fiscal Year 2004) (10 U.S.C. 2371 note), to provide a 5-year extension of the authority for DoD to carry out a pilot program for follow-on contracting for the production of items or processes begun as prototype projects under other transaction agreements. Items or processes that do not otherwise meet the definition of "commercial item" may be treated as commercial items in the award of contracts and subcontracts under the pilot program. In addition, items or processes acquired under the pilot program may be treated as developed in part with Federal funds and in part at private expense for purposes of negotiating rights in technical data.

The pilot program is addressed in DFARS Subpart 212.70. Accordingly, DFARS Subpart 212.70 is amended to reflect the extended expiration date, from September 30, 2008, to September 30, 2013.

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

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008-D008.

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,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 212 is amended as follows:

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 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.

212.7002-1 [Amended]

■ 2. Section 212.7002-1 is amended in paragraph (a)(4) by removing "2008" and adding in its place "2013".

212.7002-2 [Amended]

■ 3. Section 212.7002-2 is amended in paragraph (a)(3) by removing "2008" and adding in its place "2013".

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 225 and 252**

RIN 0750-AF91

Defense Federal Acquisition Regulation Supplement; Deletion of Obsolete Restriction on Acquisition of Vessel Propellers (DFARS Case 2007-D027)

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 remove text addressing an obsolete restriction on the acquisition of vessel propellers from foreign sources. The statute upon which the restriction was based applied only to acquisitions using fiscal year 2000 or 2001 funds.

EFFECTIVE DATE: April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0328; facsimile 703-602-7887. Please cite DFARS Case 2007-D027.

SUPPLEMENTARY INFORMATION:**A. Background**

The text at DFARS 225.7010 through 225.7010-4, and the corresponding contract clause at DFARS 252.225-7023, were added on December 13, 2000 (65 FR 77827), to implement provisions of Section 8064 of the Fiscal Year 2001 DoD Appropriations Act (Pub. L. 106-259) relating to vessel propellers. Section 8064 prohibited the use of fiscal year 2000 or 2001 DoD appropriated funds for the procurement of vessel propellers, other than those produced by a domestic source and of domestic origin, unless an exception applied or a waiver was granted. This prohibition was not repeated in subsequent appropriations acts and, therefore, is removed from the DFARS.

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

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating

procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2007–D027.

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.

- Therefore, 48 CFR parts 225 and 252 are amended 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

225.7010 [Removed and Reserved]

- 2. Section 225.7010 is removed and reserved.

225.7010–1 through 225.7010–4 [Removed]

- 3. Sections 225.7010–1 through 225.7010–4 are removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7023 [Removed and Reserved]

- 4. Section 252.225–7023 is removed and reserved.

[FR Doc. E8–8694 Filed 4–22–08; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 234, 242, and 252

RIN 0750–AF19

Defense Federal Acquisition Regulation Supplement; Earned Value Management Systems (DFARS Case 2005–D006)

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 requirements for DoD contractors to establish and maintain earned value management systems. The rule also eliminates requirements for DoD contractors to submit cost/schedule status reports.

EFFECTIVE DATE: April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0302; facsimile 703–602–7887. Please cite DFARS Case 2005–D006.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates DFARS text addressing earned value management policy for DoD contracts. The rule supplements the final FAR rule published at 71 FR 38238 on July 5, 2006, and establishes DoD-specific earned value management requirements, as permitted by the FAR. The DFARS rule is consistent with the policy in the memorandum issued by the Under Secretary of Defense (Acquisition, Technology, and Logistics) on March 7, 2005, *Subject:* Revision to DoD Earned Value Management Policy (available at http://www.acq.osd.mil/dpap/ops/policy_vault.html).

The DFARS changes in this rule include the following:

- For cost or incentive contracts and subcontracts valued at \$20,000,000 or more, the rule requires an earned value management system that complies with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA–748).

- For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, the rule requires an earned value management system that has been determined by the cognizant Federal agency (as defined in FAR 2.101) to be in compliance with the guidelines in ANSI/EIA–748.

- For cost or incentive contracts and subcontracts valued at less than \$20,000,000, the rule provides that application of earned value management is optional and is a risk-based decision.

- For firm-fixed-price contracts and subcontracts of any dollar value, the rule discourages the application of earned value management.

- The Defense Contract Management Agency is assigned responsibility for

determining earned value management compliance when DoD is the cognizant Federal agency.

- Requirements for contractor cost/schedule status reports are eliminated.

DoD published a proposed rule at 71 FR 3449 on January 23, 2006. Five sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* One respondent stated that the \$20,000,000 threshold for earned value management (EVM) further aggravates the ability to mitigate cost, schedule, and technical risks, since receiving EVM data below that threshold would be helpful in assisting leadership to make affordable decisions.

DoD Response: The rule allows for EVM below the \$20,000,000 threshold when its application is determined to be appropriate as the result of a cost-benefit analysis.

2. *Comment:* Two respondents stated that the rule should be revised to specifically state that EVM requirements do not apply to time-and-materials, labor-hour, and level-of-effort contracts.

DoD Response: The rule requires EVM to be applied only on cost and incentive type contracts and subcontracts over certain thresholds. EVM is discouraged on firm-fixed-price contracts and subcontracts of any dollar value. Further, performance-based acquisition management on developmental efforts, as described in OMB Circular A–11, Part 7, focuses on the use of EVM on cost and incentive type contracts.

3. *Comment:* One respondent expressed support of the rule, but urged that the Defense Acquisition Regulations Council work with the Civilian Agency Acquisition Council to ensure that the final FAR rule is consistent with the DFARS rule. In particular, the respondent stated that the FAR rule should be revised in four areas to make it consistent with the DFARS rule as follows: Explicitly limit application of EVM requirements to cost or incentive contracts; establish a fixed dollar value for the applicability of EVM requirements; limit integrated baseline reviews to contract post-award; and establish an executive agency (such as the Defense Contract Management Agency (DCMA)) within the Government responsible for Government-wide EVM system compliance reviews.

DoD Response: The respondent's recommendations regarding the FAR were addressed in the preamble to the FAR rule published at 71 FR 38238 on July 5, 2006. Additional changes have been made to the DFARS rule for consistency with the FAR rule. Those changes include: