

for the acquisition of vessels or vessel propellers, unless—

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 226

[DFARS Case 2001-D007]

#### Defense Federal Acquisition Regulation Supplement; Preference for Local 8(a) Contractors—Base Closure or Realignment

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify policy pertaining to preferences for local businesses in acquisitions that support a base closure or realignment. The rule clarifies that both competitive and noncompetitive acquisitions under the Section 8(a) Program are permitted if an eligible 8(a) contractor is located in the vicinity of the base to be closed or realigned.

**EFFECTIVE DATE:** March 14, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-1302; facsimile (703) 602-0350. Please cite DFARS Case 2001-D007.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends DFARS 226.7103 to clarify policy pertaining to preferences for local businesses in acquisitions that support a base closure or realignment. The present policy permits award under the Section 8(a) Program if “the 8(a) contractor” is located in the vicinity of the base to be closed or realigned. This rule amends the text to permit use of 8(a) procedures if “at least one eligible 8(a) contractor” is located in the vicinity. This change clarifies the intent of the policy, which is to permit both competitive and noncompetitive 8(a) acquisitions in support of a base closure or realignment. A similar clarifying amendment is made to the text pertaining to set-asides for small business concerns.

DoD published a proposed rule at 66 FR 47158 on September 11, 2001. DoD received no comments on the proposed rule. Therefore, DoD is adopting the

proposed rule as a final rule without change.

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 merely clarifies existing policy pertaining to acquisitions made in support of a base closure or realignment.

##### 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 226

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 226 is amended as follows:

1. The authority citation for 48 CFR Part 226 continues to read as follows:

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

#### PART 226—OTHER SOCIOECONOMIC PROGRAMS

2. Section 226.7103 is amended by revising paragraph (c) to read as follows:

##### 226.7103 Procedure.

\* \* \* \* \*

(c) If offers can be expected from business concerns in the vicinity—

(1) Consider section 8(a) only if at least one eligible 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small business only if at least one of the expected offers is from a small business located in the vicinity.

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## DEPARTMENT OF DEFENSE

### 48 CFR part 237

[DFARS Case 2001-D018]

#### Defense Federal Acquisition Regulation Supplement; Performance of Security Functions

**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 1010 of the USA Patriot Act. Section 1010 provides an exception to the prohibition on contracting for security functions at a military installation or facility. The exception applies during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter.

**DATES:** *Effective date:* March 14, 2002.

*Comment date:* Comments on the interim rule should be submitted to the address shown below on or before May 13, 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 2001-D018 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 2001-D018.

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

10 U.S.C. 2465 prohibits DoD from entering into contracts for the performance of firefighting or security-guard functions at military installations or facilities, unless certain exceptions apply. Section 1010 of the USA Patriot Act (Public Law 107-56) adds another exception to this prohibition, to apply during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter. The exception permits award of contracts for security functions to proximately located local and State governments. This interim rule amends DFARS 237.102-70 to implement Section 1010 of Public Law 107-56.

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 applies only to military installations and facilities and proximately located local and State governments. 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 subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001-D018.

## 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 1010 of the USA Patriot Act (Public Law 107-56). Section 1010 permits DoD to enter into contracts for the performance of security functions at military installations and facilities during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter. Section 1010 became effective on October 26, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Part 237

Government procurement.

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

Therefore, 48 CFR part 237 is amended as follows:

1. The authority citation for 48 CFR part 237 continues to read as follows:

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

## PART 237—SERVICE CONTRACTING

2. Section 237.102-70 is amended by adding paragraph (c) to read as follows:

### 237.102-70 Prohibition on contracting for firefighting or security-guard functions.

\* \* \* \* \*

(c) Under Section 1010 of Public Law 107-56, this prohibition does not apply to any contract that

(1) Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;

(2) Is for the performance of security functions at any military installation or facility in the United States;

(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and

(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

[FR Doc. 02-5953 Filed 3-13-02; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Parts 1515, 1533 and 1552

[FRL-7155-7]

### Acquisition Regulation: Administrative Changes and Technical Amendments

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) to eliminate two EPAAR requirements in order to streamline the EPA contracting process. The first requirement relates to the detail required in the EPA contracting officer's source selection decision. The second requirement relates to EPA contracting officer duties if there is a contractor appeal of a final decision of the contracting officer. In addition, technical amendments are being made to the EPAAR solicitation provision entitled "Procedures for Participation in the EPA Mentor-Protege Program."

**DATES:** This rule is effective on June 12, 2002 without further notice, unless EPA

receives adverse comments by April 15, 2002. If we receive adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments may be submitted to Larry Wyborski, US Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, NW., Washington, DC 20004, or electronically at: [wyborski.larry@epamail.epa.gov](mailto:wyborski.larry@epamail.epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20004, (202) 564-4369, [wyborski.larry@epamail.epa.gov](mailto:wyborski.larry@epamail.epa.gov)

### SUPPLEMENTARY INFORMATION:

#### A. Background

EPA's Office of Acquisition Management established a Procurement Guidance Work Group to assess EPA acquisition policies and recommend changes where appropriate. Among the recommendations were two changes to the EPAAR to eliminate requirements which either: (1) Duplicate other Federal Regulations, or (2) outline unnecessary procedural requirements for EPA contracting officers. Specifically, EPAAR 1515.308-71 provides procedural requirements for documentation in source selection decisions over and above those required by Federal Acquisition Regulation (FAR) 15.308. The EPA Procurement Guidance Work Group determined these additional procedural requirements are not necessary, and therefore should be removed from the EPAAR. The Procurement Guidance Work Group also determined that EPAAR 1533.212, Contracting Officer's duties upon appeal, essentially duplicate procedures set forth in 43 CFR part 4 (Department of Interior Board of Contract Appeals Regulations) and should therefore be removed from the EPAAR.

In addition, technical amendments are being made to the solicitation provision at EPAAR 1552.219-71, Procedures for Participation in the Mentor-Protege Program, in order to bring the provision into compliance with statutory language. Specifically, since Pub. L. 102-389 (EPA's 1993 Appropriations Act) did not require certain restrictions on the mentor-protege program previously specified in the provision, these restrictions have been eliminated.