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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217 and 252

[DFARS Case 2003-D079]

Defense Federal Acquisition Regulation Supplement; Special Contracting Methods

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 text pertaining to the use of special contracting methods. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: *Effective Date:* May 12, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D079.

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/dars/dfars/transformation/index.htm>.

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

- Clarify text on the use of option clauses for industrial capability production planning;
- Delete unnecessary text on determinations for interagency acquisitions under the Economy Act;
- Delete restrictive requirements relating to the use of master agreements for vessel repair;
- Delete obsolete procedures for acquisition of bakery and dairy products;
- Lower the level for approval of profit on undefinitized contract actions for which substantial performance has been completed; and
- Delete guidance on the use of options; and procedures for preparation of master agreements and job orders, for breakout and acquisition of spare parts, and for acquisition of work over and above contract requirements. Text on these subjects has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 54695 on September 16, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted 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 updates and streamlines DFARS text, but makes no significant change to DoD contracting policy.

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 217 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 217 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 217 and 252 continues to read as follows:

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

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.202 is revised to read as follows:

217.202 Use of options.

See PGI 217.202 for guidance on the use of options.

217.208 [Amended]

■ 3. Section 217.208 is amended in the first sentence by revising the parenthetical to read “(10 U.S.C. 2305(a)(5))”.

■ 4. Section 217.208-70 is amended by revising paragraph (b) introductory text and paragraph (b)(1) to read as follows:

217.208-70 Additional clauses.

* * * * *

(b) When a surge option is needed in support of industrial capability production planning, use the clause at 252.217-7001, Surge Option, in solicitations and contracts.

(1) Insert the percentage of increase the option represents in paragraph (a) of the clause to ensure adequate quantities are available to meet item requirements.

* * * * *

217.503 [Removed]

■ 5. Section 217.503 is removed.

■ 6. Sections 217.7103 and 217.7103-1 are revised to read as follows:

217.7103 Master agreements and job orders.

217.7103-1 Content and format of master agreements.

Follow the procedures at PGI 217.7103-1 for preparation of master agreements.

■ 7. Section 217.7103-3 is amended by revising paragraph (b) and removing paragraphs (c) through (f). The revised text reads as follows:

217.7103-3 Solicitations for job orders.

* * * * *

(b) Follow the procedures at PGI 217.7103-3 when preparing solicitations for job orders.

217.7103-4 [Removed]

- 8. Section 217.7103-4 is removed.

217.7103-5 through 217.7103-7 [Redesignated]

- 9. Sections 217.7103-5 through 217.7103-7 are redesignated as sections 217.7103-4 through 217.7103-6, respectively.

- 10. Newly designated section 217.7103-4 is amended by revising paragraph (b) and removing paragraph (c). The revised text reads as follows:

217.7103-4 Emergency work.

* * * * *

(b) Follow the procedures at PGI 217.7103-4 when processing this type of undefinitized contract action.

- 11. Newly designated section 217.7103-5 is revised to read as follows:

217.7103-5 Repair costs not readily ascertainable.

Follow the procedures at PGI 217.7103-5 if the nature of any repairs is such that their extent and probable cost cannot be ascertained readily.

Subpart 217.72 [Removed and Reserved]

- 12. Subpart 217.72 is removed and reserved.

- 13. Section 217.7404-5 is amended by revising paragraphs (b)(1) and (2) to read as follows:

217.7404-5 Exceptions.

* * * * *

(b) * * *

- (1) A contingency operation; or
- (2) A humanitarian or peacekeeping operation.

217.7404-6 [Amended]

- 14. Section 217.7404-6 is amended in the introductory text by removing "agency" and adding in its place "contracting activity".

217.7405 [Removed]

- 15. Section 217.7405 is removed.

217.7406 [Redesignated]

- 16. Section 217.7406 is redesignated as section 217.7405.

217.7500 [Amended]

- 17. Section 217.7500 is amended by removing the parenthetical "(as defined in appendix E)".

217.7501 through 217.7504 [Redesignated]

- 18. Sections 217.7501 through 217.7504 are redesignated as sections 217.7502 through 217.7505, respectively.

- 19. A new section 217.7501 is added to read as follows:

217.7501 Definition.

Replenishment parts, as used in this subpart, means repairable or consumable parts acquired after the initial provisioning process.

217.7502 [Amended]

- 20. Newly designated section 217.7502 is amended as follows:

- a. In paragraph (b)(1) by removing "217.7503" and adding in its place "PGI 217.7504"; and

- b. In paragraph (c) by removing "217.7504" and adding in its place "217.7505".

- 21. Newly designated sections 217.7503 and 217.7504 are revised to read as follows:

217.7503 Spares acquisition integrated with production.

Follow the procedures at PGI 217.7503 for acquiring spare parts concurrently with the end item.

217.7504 Acquisition of parts when data is not available.

Follow the procedures at PGI 217.7504 when acquiring parts for which the Government does not have the necessary data.

- 22. Section 217.7506 is added to read as follows:

217.7506 Spare parts breakout program.

See PGI 217.7506 and DoD 4140.1-R, DoD Supply Chain Materiel Management Regulation, Chapter 8, Section C8.3, for spare parts breakout requirements.

217.7600 [Removed]

- 23. Section 217.7600 is removed.

- 24. Section 217.7601 is revised to read as follows:

217.7601 Provisioning.

(a) Follow the procedures at PGI 217.7601 for contracts with provisioning requirements.

(b) For technical requirements of provisioning, see DoD 4140.1-R, DoD Supply Chain Materiel Management Regulation, Chapter 2, Section C2.2.

217.7602 through 217.7603-3 [Removed]

- 25. Sections 217.7602 through 217.7603-3 are removed.

217.7700 [Removed]

- 26. Section 217.7700 is removed.

- 27. Section 217.7701 is revised to read as follows:

217.7701 Procedures.

Follow the procedures at PGI 217.7701 when acquiring over and above work.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.217-7004 [Amended]

- 28. Section 252.217-7004 is amended as follows:

- a. By revising the clause date to read "(MAY 2006)"; and

- b. In paragraph (a), in the first sentence, by removing "in accordance with FAR part 14 or 15, as applicable".

252.217-7017 through 252.217-7025 [Removed and Reserved]

- 29. Sections 252.217-7017 through 252.217-7025 are removed and reserved.

252.217-7027 [Amended]

- 30. Section 252.217-7027 is amended in the introductory text by removing "217.7406" and adding in its place "217.7405".

Appendix E to Chapter 2 [Removed and Reserved]

- 31. Appendix E to Chapter 2 is removed and reserved.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 222, 232, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update section headings, Internet addresses, and cross-references.