

(1) A multiyear contract providing for economic order quantity procurement in excess of \$20 million in any one year; or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (10 U.S.C. 2306b(l)(1)(A)).

(b) Before initiating an advance procurement, the contracting officer must verify that it is consistent with DoD policy (e.g., Part 3 of DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, and the full funding policy in Volume 2A, Chapter 1, of DoD 7000.14-R, Financial Management Regulation).

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 204, 212, 213, 252, and 253

[DFARS Case 98-D027]

#### Defense Federal Acquisition Regulation Supplement; Taxpayer Identification Numbers and Commercial and Government Entity Codes

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add procedures for reporting payment information to the Internal Revenue Service (IRS); to revise the procedures for obtaining Taxpayer Identification Numbers (TINs) and Commercial and Government Entity (CAGE) codes when contractors are required to register in the Central Contractor Registration (CCR) database; and to make editorial changes.

**EFFECTIVE DATE:** August 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra G. Haberlin, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; telefax (703) 602-0350. Please cite DFARS Case 98-D027.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

1. *Reporting payment information to the IRS.* This rule supplements the final

FAR rule published as Item I of Federal Acquisition Circular 97-12 on June 17, 1999 (64 FR 32741).

a. The FAR rule renumbered and retitled FAR 4.903, Payment information, as FAR 4.904, Reporting payment information to the IRS; and deleted the list, previously located at FAR 4.903(b), of the types of payments that are exempt from reporting payment information to the IRS on Form 1099. The list was considered unnecessary for including in the FAR, because the payment office is responsible for submitting Form 1099 reports to the IRS.

b. This rule adds a new section at DFARS 204.904, Reporting payment information to the IRS. The new section contains a list that is similar to the one previously found in the FAR, but the list has been updated to comply with the Taxpayer Relief Act of 1997 (Pub. L. 105-32). Section 1022 of the Act amended 26 U.S.C. 6041A to add payments under certain classified contracts to the list of exceptions, and to remove payments for services provided by corporations from the list. DFARS 204.904 also adds a requirement for the contracting officer to provide a statement to the payment office if the contractor is providing services subject to Form 1099 reporting to the IRS. The statement is not required if the contracting officer concludes that one of the exceptions listed at DFARS 204.904(1) applies. This procedure is added to the DFARS to facilitate issuance of Form 1099 reports by the payment office.

2. *Procedures for obtaining TINs and CAGE code numbers when CCR applies.* The FAR rule also modified the process for obtaining TINs, by permitting agencies to prescribe their own procedures for obtaining TINs from contractors and for providing the TINs to the payment office. DoD uses the CCR database for these purposes. This DFARS rule clarifies that the contracting officer must not use the solicitation provisions at FAR 52.204-3, Taxpayer Identification, and DFARS 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting; or paragraph (b) of the provision at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, when the contractor is required to register in the CCR database, since the information that these provisions request is duplicative of the information that the contractor must provide during the CCR process.

3. *Editorial changes.* This DFARS rule makes a number of editorial changes, including updating CAGE code

information in Subpart 204.72, Contractor Identification, and clarifying certain requirements in Subpart 204.73, Central Contractor Registration.

4. *Proposed rule.* A proposed DFARS rule was published in the **Federal Register** on January 15, 1999 (64 FR 2617). Three sources submitted comments on the proposed rule. All comments were considered in the development of the final rule.

5. 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 FAR and DFARS already contain requirements for offerors and contractors to provide TINs and CAGE codes and to register in the CCR database. This rule simply clarifies that, if a prospective contractor is required to register in the CCR database, it does not have to provide a TIN or a CAGE code to the contracting officer.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) applies because the rule contains information collection requirements. The final rule decreases the collection requirements currently approved under Office of Management and Budget Control Number 0704-0225, since the rule limits use of the solicitation provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting, to contractors that are not required to register in the CCR database. Therefore, the final rule reduces the number of respondents by 89,545, and the number of burden hours by 22,386.

#### List of Subjects in 48 CFR Parts 204, 212, 213, 252, and 253

Government procurement.

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

Therefore, 48 CFR parts 204, 212, 213, 252, and 253 are amended as follows:

1. The authority citation for 48 CFR parts 204, 212, 213, 252, and 253 continues to read as follows:

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

#### PART 204—ADMINISTRATIVE MATTERS

2. Section 204.203 is added to read as follows:

**204.203 Taxpayer identification information.**

(1) The procedures at FAR 4.203(a) and (b) do not apply to contracts that include the clause at 252.204-7004, Required Central Contractor Registration.

(2) For a DoD basic ordering agreement or indefinite-delivery contract that requires the contractor to register in the Central Contractor Registration (CCR) database (see subpart 207.73)—

(i) The contracting officer issuing the agreement or contract need not provide a copy of the completed solicitation provision at FAR 52.204-3 or 52.212-3(b) to DoD contracting officers placing orders under the agreement or contract; and

(ii) A DoD contracting officer placing an order under the agreement or contract need not provide the TIN or type of organization information to the payment office.

(3) For a non-DoD basic ordering agreement or indefinite-delivery contract, a DoD contracting officer placing an order under the agreement or contract must use the procedures at 204.7303(a)(2) to determine if the contractor is registered in the CCR database.

(i) If the contractor is registered, the contracting officer need not provide the TIN or type of organization information to the payment office.

(ii) If the contractor is not registered, the contracting officer must follow the procedures at 204.7303(b).

**204.602-70 [Removed]**

3. Section 204.602-70 is removed.

4. Section 204.603 is added to read as follows:

**204.603 Solicitation provisions.**

(1) Use the provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting, in solicitations when—

(i) The solicitation does not include the clause at 252.204-7004, Required Central Contractor Registration; and

(ii) The CAGE codes for the potential offerors are not available to the contracting office.

(2) Use the provision at FAR 52.204-6, Data Universal Numbering System (DUNS) Number, in solicitations that—

(i) Have an estimated value exceeding \$25,000; or

(ii) Have an estimated value of \$25,000 or less and include the clause at 252.204-7004, Required Central Contractor Registration.

5. Subpart 204.9 is revised to read as follows:

**Subpart 204.9—Taxpayer Identification Number Information**

Sec.

204.902 General.

204.904 Reporting payment information to the IRS.

204.905 Solicitation provision.

**204.902 General**

(b) DoD uses DD Form 350, Individual Contracting Action Report, (see 204.670) to meet these reporting requirements.

**204.904 Reporting payment information to the IRS.**

(1) 26 U.S.C. 6041 and 6041A and 26 CFR 1.6041 require Government payors to report to the IRS, on IRS Form 1099, payments of an annual cumulative value of \$600 or more provided to a contractor, except payments for—

(i) Supplies, unless the supplies are incidental to the furnishing of services;

(ii) Telegram, telephone, freight, storage, or similar charges;

(iii) Income that the payor must report on IRS Form W-2 (e.g., payments to employees or payments under contracts for personal services);

(iv) Any contract with a Federal agency;

(v) Any contract with a State, the District of Columbia, or a possession of the United States; or a political subdivision, agency, or instrumentality of any of the foregoing;

(vi) Any contract with an organization exempted from taxation by 26 U.S.C. 501(a). Such organizations may include charitable, social welfare, labor, agricultural, veterans', and political organizations; business leagues; social clubs; fraternal societies; and employees' associations. Contracting officers may obtain additional information to assist in determining an organization's tax-exempt status via the Internet at [http://www.irs.ustreas.gov/prod/bus\\_info/eo/eo-types.html](http://www.irs.ustreas.gov/prod/bus_info/eo/eo-types.html);

(vii) Any contract with a foreign government or a political subdivision of a foreign government;

(viii) Any contract with an international organization listed in 22 U.S.C. 288;

(ix) Any classified contract excepted by 26 U.S.C. 6050M. As used in this section only, a contract is classified if—

(A) DoD designates the existence of the contract or the contract subject matter as classified (i.e., the contract requires a specific degree of protection against unauthorized disclosure for reasons of national security); or

(B) The head of the agency determines that filing IRS Form 1099 would interfere with the effective conduct of a confidential law enforcement or foreign intelligence activity; or

(x) Such other services as the IRS may specify in regulations.

(2) Unless an exception in paragraph (1) of this section applies, the contracting officer must provide, as the last page of the copy of the contract sent to the payment office—

(i) A statement that the contractor is providing services subject to Form 1099 payment information reporting to the IRS, as required by 26 U.S.C. 6041 and 6041A; and

(ii) The contractor's Taxpayer Identification Number and type of organization, if the contract does not include the clause at 252.204-7004, Required Central Contractor Registration.

**204.905 Solicitation provision.**

Do not use the provision at FAR 52.204-3, Taxpayer Identification, in solicitations that include the clause at 252.204-7004, Required Central Contractor Registration.

6. Sections 204.7200 through 204.7204 are revised to read as follows:

**204.7200 Scope of subpart**

This subpart prescribes uniform policies and procedures for identification of commercial and Government entities when it is necessary to—

(a) Exchange data with another contracting activity, including contract administration activities and contract payment activities, or comply with the reporting requirements of subpart 204.6; or

(b) Identify contractors for the purpose of developing computerized acquisition systems or solicitation mailing lists.

**204.7201 Definitions.**

(a) "Commercial and Government Entity (CAGE) code" means—

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization (NATO) that DLIS records and maintains in the CAGE master file. This type of code is known as an "NCAGE code."

(b) "Contractor identification code" means a code that the contracting office uses to identify an offeror. The three types of contractor identification codes are CAGE codes, Data Universal Numbering System (DUNS) numbers, and Taxpayer Identification Numbers (TINs).

**204.7202 General.****204.7202-1 CAGE codes.**

(a) DLIS assigns or records and maintains CAGE codes to identify commercial and Government entities. DoD 4000.25-5-M, Military Standard Contract Administration Procedures (MILSCAP); Volume 7 of DoD 4100.39-M, Federal Logistics Information System (FLIS) Procedures Manual; and 253.204-70(b)(5)(ii)(C) prescribe use of CAGE codes.

(b)(1) If a prospective contractor must register in the Central Contractor Registration (CCR) database (see subpart 204.73) and does not have a CAGE code, DLIS will assign a CAGE code when the prospective contractor submits its request for registration in the CCR database.

(2) If registration in the CCR database is not required, the prospective contractor's CAGE code is not already available in the contracting office, and the prospective contractor does not respond to the provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting, use the following procedures:

(i) To identify the prospective contractor's CAGE code, use—

(A) The monthly H-series CD ROM that contains the H-4/H-8 CAGE master file issued by DLIS (Their address is: Customer Service, Federal Center, 74 Washington Avenue, North, Battle Creek, MI 49017-3084. Their telephone number is: toll-free 1-888-352-9333);

(B) The on-line access to the CAGE file through the Defense Logistics Information System;

(C) The on-line access to the Defense Logistics Agency (DLA) CAGE file through the DLA Network or dial-up capability; or

(D) The Internet to access the CAGE Lookup Server at <http://www.dlis.dla.mil/cageserve.htm>.

(ii) If no CAGE code is identified through use of the procedures in paragraph (b)(2)(i) of this subsection, ask DLIS to assign a CAGE code. Submit a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, (or electronic equivalent) to the address in paragraph (b)(2)(i)(A) of this subsection, ATTN: DLIS-SBB. The contracting office completes Section A of the DD Form 2051, and the contractor completes Section B. The contracting office must verify Section B before submitting the form.

(c) Direct questions on obtaining computer tapes, electronic updates, or code assignments to DLIS (DLIS-SBB) at

DSN 932-4381, or commercial (616) 961-4381.

**204.7202-2 DUNS numbers.**

Requirements for use of DUNS numbers are in FAR 4.602(d) and 4.603.

**204.7202-3 TINs.**

Requirements for use of TINs are in FAR subpart 4.9.

**204.7203 Responsibilities of contracting officers.**

(a) Assist offerors in obtaining the required CAGE codes.

(b) Do not deny a potential offeror a solicitation package because the offeror does not have a contractor identification code.

(c) Consider requesting a CAGE code at the time a potential offeror is sent a solicitation package or added to the mailing list to ensure that a code is assigned in sufficient time to process the DD Form 350, Individual Contracting Action Report, without delay.

**204.7204 Maintenance of the CAGE file.**

(a) DLIS will accept written requests for changes to CAGE files, other than name changes, from the following entities:

(1) The entity identified by the code. The entity must use company letterhead to forward the request.

(2) The contracting office.

(3) The contract administration office.

(b) Submit requests for changes to CAGE files on DD Form 2051, or electronic equivalent, to—Defense Logistics Information Service, DLIS-SBB, Federal Center, 74 Washington Avenue, North Battle Creek, MI 49017-3084. Telephone Numbers: DSN 932-4381, commercial (616) 961-4381. Facsimile: (616) 961-4528, 4388, 4485.

(c) The contracting officer responsible for execution of a change-of-name agreement (see FAR subpart 42.12) must submit the agreement to DLIS-SBB. If there are no current contracts, each contracting and contract administration office receiving notification of changes from the commercial entity must forward a copy of the change notice annotated with the CAGE code to DLIS-SBB unless the change notice indicates that DLIS-SBB already has been notified.

(d) Additional guidance for maintaining CAGE codes is in Volume 7 of DoD 4100.39-M, Federal Logistics Information System (FLIS) Procedures Manual.

7. Sections 204.7302 through 204.7304 are revised to read as follows:

**204.7302 Policy.**

Prospective contractors must be registered in the CCR database prior to award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, except for—

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

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

(c) Classified contracts or purchases (see FAR 4.401) when registration in the CCR database, or use of CCR data, could comprise the safeguarding of classified information or national security;

(d) 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(7), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies; and

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

**204.7303 Procedures.**

(a)(1) Except as provided in 204.7302, the contracting officer must require each offeror to provide a DUNS number (see 204.603(2)) or, if applicable, a DUNS+4 number, with its verbal or written offer, regardless of the dollar amount of the offer.

(2) Before awarding a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, the contracting officer must verify that the prospective contractor is registered in the CCR database (but see paragraph (b) of this section). The contracting officer may verify registration using the DUNS number or, if applicable, the DUNS+4 number, by calling toll-free: 1-800-841-4431, commercial: (616) 961-5757, or DSN: 932-5757; via the Internet at <http://ccr.edi.disa.mil/ccr/cgi-bin/status.pl>; or as otherwise provided by agency procedures.

(3) The contracting officer need not verify registration before placing an order or call under a DoD contract or agreement.

(4) The contracting officer must verify registration before placing an order or call under a non-DoD contract or agreement. If the contracting is not registered, the contracting officer must follow the procedures in paragraph (b) of this section.

(5) As part of the annual review of basic agreements, basic ordering agreements, and blanket purchase agreements, contracting officers must modify these agreements to incorporate the clause at 252.204-7004, Required Central Contractor Registration.

(b) If the contracting officer determined that a prospective contractor is not registered in the CCR database and an exception to the registration requirements for the awarded does not apply (see 204.7302), the contracting officer must—

(1) If the needs of the requiring activity allow for a delay, proceed toward after the contractor is registered; or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(c) Agencies must protect against improper disclosure of contractor CCR information.

(d) The contracting officer must, on contractual documents transmitted to the payment office, provide either the Commercial and Government Entity code or the DUNS number in accordance with agency procedures.

#### **§ 204.7304 Contract clause.**

Except as provided in 204.7302, use the clause at 252.204-7004, Required Central Contractor Registration, in solicitations and contracts.

### **PART 212—ACQUISITION OF COMMERCIAL ITEMS**

8. Section 212.301 is amended by adding paragraph (b)(2) to read as follows:

#### **§ 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(b)(2) Paragraph (b) of the provision at FAR 52.212-3 does not apply when the solicitation includes the clause at 252.204-7004, Required Central Contractor Registration.

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### **PART 213—SIMPLIFIED ACQUISITION PROCEDURES**

9. Subpart 213.1 is added to read as follows:

#### **Subpart 213.1—Procedures**

Sec.

213.106-3 Award and documentation.

#### **§ 213.106-3 Award and documentation.**

(e) The procedures at FAR 13.106-3(e) do not apply when the contract includes

the clause at 252.204-7004, Required Central Contractor Registration.

### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

10. Section 252.204-7001 is revised to read as follows:

#### **§ 252.204-7001 Commercial and Government Entity (CAGE) Code Reporting.**

As prescribed in 204.603(1), use the following provision:

Commercial and Government Entity (CAGE) Code Reporting (Aug 1999)

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter "CAGE" before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Information Service (DLIS). The Contracting Officer will—

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLIS; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

(End of provision)

### **PART 253—FORMS**

11. Section 253.204-70 is amended by revising paragraph (b)(5)(ii)(F) (3) to read as follows:

#### **§ 253.204-70 DD Form 350, Individual Contracting Action Report.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(F) \* \* \*

(3) An agency or instrumentality of the Federal Government.

\* \* \* \* \*

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### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 635**

[Docket No. I.D. 071698B]

RIN 0648-AJ67

#### **Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring Systems**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Delay of effectiveness.

**SUMMARY:** NMFS delays the effective date of the Vessel Monitoring System established by 50 CFR 635.69, published May 28, 1999, from September 1, 1999 until January 1, 2000.

**DATES:** The effective date of the addition of 50 CFR 635.69, published May 28, 1999 (64 FR 29090), is delayed until January 1, 2000.

**ADDRESSES:** Copies of the Highly Migratory Species Fishery Management Plan (HMS FMP), the final rule and supporting documents can be obtained from Rebecca Lent, Chief, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Jill Stevenson, NMFS, (301) 713-2347, or Buck Sutter (727) 570-5447.

**SUPPLEMENTARY INFORMATION:** The final regulations to implement the HMS FMP, and Amendment 1 to the Atlantic Billfish Fishery Management Plan included a provision requiring an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic longline to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board. The VMS requirement of the final rule is effective September 1, 1999.

At the time of publication of the final rule (May 28, 1999), NMFS indicated that a **Federal Register** announcement would be forthcoming listing the hardware specifications for approved VMS units. Due to unforeseen circumstances, NMFS has experienced a delay in type approving suitable units and service providers. Once the type approval process has been completed, NMFS will publish a **Federal Register** document listing NMFS-approved VMS