

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends part 52 of title 47 of the Code of Federal Regulations as follows:

PART 52—NUMBERING

1. The authority citation for part 52 continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

2. In § 52.19, revise paragraphs (c)(3)(i) and (c)(3)(ii) and remove paragraph (c)(3)(iii) to read as follows:

§ 52.19 Area code relief.

* * * * *

(c) * * *

(3) * * *

(i) No area code overlay may be implemented unless all central office codes in the new overlay area code are assigned to those entities requesting assignment on a first-come, first-serve basis, regardless of the identity of, technology used by, or type of service provided by that entity. No group of telecommunications carriers shall be excluded from assignment of central office codes in the existing area code, or be assigned such codes only from the overlay area code, based solely on that group's provision of a specific type of telecommunications service or use of a particular technology; and,

(ii) No area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code.

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DEPARTMENT OF DEFENSE

48 CFR Parts 203, 209, 225, and 249

[DFARS Case 99–D013]

Defense Federal Acquisition Regulation Supplement; Debarment Investigation and Reports

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 clarify the historical practice of the agencies and the original intent of the regulation that any person may refer a matter to the agency debarring and suspending official, and that the absence of a referral or any information specified in the report format in the DFARS will not preclude the debarring and suspending official from initiating the debarment or suspension process or from making a final decision.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 99–D013.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the DFARS to clarify that any person may refer a matter to the agency debarring and suspending official, and that the absence of a referral or any information specified in the report format at DFARS 209.406(a)(ii) will not preclude the debarring and suspending official from initiating the debarment or suspension process or from making a final decision.

There have been recent efforts to convince various Federal courts that receipt of a contracting officer's report is a jurisdictional prerequisite to action by the debarring and suspending official. In fact, the historical practice of the agencies has been to take suspending and debarring action whenever appropriate, whether or not a contracting officer's report was available. This DFARS change is intended merely to make clear the actual practices of the debarring and suspending authorities and the original intent of this language.

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 final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment 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 99–D013.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain 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 203, 209, 225, and 249

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 203, 209, 225, and 249 are amended as follows:

1. The authority citation for 48 CFR Parts 203, 209, 225, and 249 continues to read as follows:

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

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.103–2 is revised to read as follows:

203.103–2 Evaluating the certification.

(b)(3) Report the matter in accordance with 209.406–3 or 209.407–3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

3. Section 203.104–10 is added to read as follows:

203.104–10 Violation or possible violations.

(d)(3) When referring a violation to the agency debarring and suspending official, use the procedures at 209.406–3 or 209.407–3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.203, 203.301, 203.405, and 203.502 [Amended]

4. The following sections are amended by adding, after the phrase “in accordance with 209.406–3,” the phrase “or 209.407–3,”:

- a. 203.203;
- b. 203.301(b);
- c. 203.405(b); and
- d. 203.502.

5. Section 203.570–4 is revised to read as follows:

203.570–4 Reporting.

When a defense contractor or first-tier subcontractor is found in violation of the prohibition in 203.570–2, report the matter in accordance with 209.406–3 or 209.407–3, and DoDD 7050.5,

Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

PART 209—CONTRACTOR QUALIFICATIONS

6. Section 209.105-2 is added to read as follows:

209.105-2 Determinations and documentation.

(a) When the contracting officer considers such action appropriate, the contracting officer must submit a copy of the determination to the appropriate debarring and suspending official (see 209.403).

7. Section 209.403 is amended as follows:

a. In the introductory text by removing the words "*Debarring official*" and adding in their place the words "*Debarring and suspending official*";

b. In paragraph (1), in the second entry, by removing the words "Navy-the" and adding in their place the words "Navy-The";

c. In paragraph (2) introductory text by adding, after the word "debarring," the words "and suspending"; and

d. By adding paragraph (3) to read as follows:

209.403 Definitions.

* * * * *

(3) The Defense Logistics Agency Special Assistant for Contracting Integrity is the exclusive representative of the Secretary of Defense to suspend and debar contractors from the purchase of Federal personal property under the Federal Property Management Regulations (41 CFR 101-45.6) and the Defense Materiel Disposition Manual (DoD 4160.21-M).

8. Section 209.406-3 is revised to read as follows:

209.406-3 Procedures.

(a) *Investigation and referral.*

(i) Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official.

(ii) Use the following format when referring a matter to the agency debarring and suspending official for consideration. To the extent practicable, provide all specified information.

(A) Name, address, and telephone number of the point of contact for the activity making the report.

(B) Name, contractor and Government entity (CAGE) code, and address of the contractor.

(C) Name and addresses of the members of the board, principal officers, partners, owners, and managers.

(D) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship.

(E) For each contract affected by the conduct being reported—

(1) The contract number;

(2) All office identifying numbers or symbols;

(3) Description of supplies or services;

(4) The amount;

(5) The percentage of completion;

(6) The amount paid the contractor;

(7) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(8) The amount due the contractor.

(F) For any other contracts outstanding with the contractor or any of its affiliates—

(1) The contract number;

(2) The amount;

(3) The amounts paid the contractor;

(4) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(5) The amount due the contractor.

(G) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor.

(H) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated).

(I) If a contracting office initiates the report, the comments and recommendations of the contracting officer and of each higher-level contracting review authority regarding—

(1) Whether to suspend or debar the contractor;

(2) Whether to apply limitations to the suspension or debarment;

(3) The period of any recommended debarment; and

(4) Whether to continue any current contracts with the contractor (or explain why a recommendation regarding current contracts is not included).

(J) When appropriate, as an enclosure to the report—

(1) A copy or pertinent extracts of each pertinent contract;

(2) Witness statements or affidavits;

(3) Copies of investigative reports when authorized by the investigative agency;

(4) Certified copies of indictments, judgments, and sentencing actions;

(5) A copy of any available determinations of nonresponsibility in accordance with FAR 9.105-2(a)(1); and

(6) Any other appropriate exhibits or documentation.

(iii) Send three copies of each report, including enclosures, to the appropriate debarring and suspending official.

(iv) If a referral lacks sufficient evidence of a cause for debarment, the debarring and suspending official may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(b) *Decisionmaking process.*

(i) The agency debarring and suspending official may initiate the debarment process by issuing a notice of proposed debarment in accordance with FAR 9.406-3(c) when the debarring and suspending official finds that the administrative record contains sufficient evidence of one or more of the causes for debarment stated in FAR 9.406-2 or 209.406-2.

(A) The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format in paragraph (a)(ii) of this subsection, will not preclude the debarring and suspending official from making such a finding.

(B) The signature of the debarring and suspending official on the notice of proposed debarment is sufficient evidence that the debarring and suspending official has made such a finding.

(ii) The agency debarring and suspending official must use the decisionmaking process stated in FAR 9.406-3(b), DFARS Appendix H, and any agency-specific procedures that were provided to the contractor in advance of the decision.

(d) *Debarring official's decision.* The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format in paragraph (a)(ii) of this subsection, will not preclude the debarring and suspending official from making a decision.

9. Sections 209.407 and 209.407-3 are added to read as follows:

§ 209.407 Suspension.

209.407-3 Procedures.

(a) *Investigation and referral.*

(i) Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official.

(ii) Use the format at 209.406-3(a)(ii) when referring a matter to the agency debarring and suspending official for consideration. To the extent practicable, provide all information specified in the format.

(iii) If a referral lacks sufficient evidence of a cause for suspension, the

debaring and suspending official may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(b) *Decisionmaking process.*

(i) The agency debaring and suspending official may initiate the suspension process by issuing a notice of suspension in accordance with FAR 9.407-3(c) when the debaring and suspending official finds that the administrative record contains sufficient evidence of one or more of the causes for suspension stated in FAR 9.407-2.

(A) The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format at 209.406-3(a)(ii), will not preclude the debaring and suspending official from making such a finding.

(B) The signature of the debaring and suspending official on the notice of suspension is sufficient evidence that the debaring and suspending official has made such a finding.

(ii) In deciding whether to terminate a suspension following a submission of matters in opposition, the agency debaring and suspending official must use the decisionmaking process stated in FAR 9.407-3(b), DFARS Appendix H, and any agency-specific procedures that were provided to the contractor in advance of the decision.

(d) *Suspending officials's decision.* The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format at 209.406-3(a)(ii), will not preclude the debaring and suspending official from making a decision.

PART 225—FOREIGN ACQUISITION

10. Section 225.206 is added to read as follows:

225.206 Noncompliance.

(c)(4) Prepare any report of noncompliance in accordance with the procedures at 209.406-3 or 209.407-3.

PART 249—TERMINATION OF CONTRACTS

11. Section 249.106 is added to read as follows:

249.106 Fraud or other criminal conduct.

If the TCO suspects fraud or other criminal conduct, the TCO must report the facts in accordance with the procedures at 209.406-3 or 209.407-3.

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DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 99-D304]

Defense Federal Acquisition Regulation Supplement; Subcontracting Goals for Purchases Benefiting People Who Are Blind or Severely Disabled

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 implement Section 807 of the National Defense Authorization Act for Fiscal Year 2000. Section 807 makes permanent the authority for contractors to credit their purchases from nonprofit agencies for the blind or severely disabled toward their small business subcontracting goals.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; telefax (703) 602-0350. Please cite DFARS Case 99-D304.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 219.703 to implement Section 807 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65). Section 807 amends 10 U.S.C. 2410d, which provides that contractors may credit their purchases from qualified nonprofit agencies for the blind or severely disabled toward their small business subcontracting goals. 10 U.S.C. 2410d previously contained a termination date of September 30, 1999. Section 807 repeals this termination date.

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 final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment 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 99-D304.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain 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 219

Government procurement.

Michel P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 219 is amended as follows:

1. The authority citation for 48 CFR Part 219 continues to read as follows:

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

PART 219—SMALL BUSINESS PROGRAMS

219.703 [Amended]

2. Section 219.703 is amended as follows:

a. In paragraph (a) introductory text, in the last sentence, by removing the phrase "through fiscal year 1999"; and

b. In paragraph (a)(2)(B) by removing the words "Small Business and Small Disadvantaged" and adding in their place the words, "Small, Small Disadvantaged and Women-Owned Small".

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DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 99-D306]

Defense Federal Acquisition Regulation Supplement; Comprehensive Small Business Subcontracting Plans

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 implement Section 817 of the National Defense Authorization Act for Fiscal Year 2000. Section 817 provides for a 5-year extension of the DoD test program for negotiation of comprehensive small business subcontracting plans.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, PDUSD(AT&L)DP(DAR), IMD 3D139,