

PART 227—PATENTS, DATA, AND COPYRIGHTS**227.7103–3 [Amended]**

■ 10. Section 227.7103–3 is amended in paragraph (c) by removing “the clause at 252.277–7013” and adding “the clause at 252.227–7013” in its place.

PART 242—CONTRACTOR INSURANCE/PENSION REVIEW

■ 11. Section 242.302 paragraph (a)(S–72) is revised to read as follows:

242.302 Contract administration functions.

(a) * * *
(S–72) Ensure implementation of the Synchronized Predeployment and Operational Tracker (SPOT) by the contractor and maintain surveillance over contractor compliance with SPOT business rules available at the Web site provided at PGI 225.7402–5(a)(iv) for contracts incorporating the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States. See PGI 242.302(a)(S–72) for guidance on assessing contractor’s implementation of SPOT.

* * * * *

■ 12. Section 242.7302 is revised to read as follows:

242.7302 Requirements.

(a)(1) An in-depth CIPR as described at DFARS 242.7301(a)(1) shall be conducted only when—

(i) A contractor has \$50 million of qualifying sales to the Government during the contractor’s preceding fiscal year; and

(ii) The ACO, with advice from DCMA insurance/pension specialists and DCAA auditors, determines a CIPR is needed based on a risk assessment of the contractor’s past experience and current vulnerability.

(2) Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR that concentrates on specific areas of a contractor’s insurance programs, pension plans, or other deferred compensation plans shall be performed for a contractor (including, but not limited to, a contractor meeting the requirements in paragraph (a) of this section) when any of the following circumstances exists, but only if the circumstance(s) may

result in a material impact on Government contract costs:

(1) Information or data reveals a deficiency in the contractor’s insurance/pension program.

(2) The contractor proposes or implements changes in its insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) The Government needs to follow up on contractor implementation of prior CIPR recommendations.

(c) The DCAA auditor shall use relevant findings and recommendations of previously performed CIPRs in determining the scope of any audits of insurance and pension costs.

(d) When a Government organization believes that a review of the contractor’s insurance/pension program should be performed, that organization should provide a recommendation for a review to the ACO. If the ACO concurs, the review should be performed as part of an ACO-initiated special CIPR or as part of a CIPR already scheduled for the near future.

PART 245—GOVERNMENT PROPERTY**245.103–72 [Amended]**

■ 13. Section 245.103–72 is amended by removing “PGI 245–103–72” and adding “PGI 245.103–72” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.204–7004 [Amended]**

■ 14. Section 252.204–7004 is amended—

■ (a) By removing the clause date “(SEP 2007)” and adding “(FEB 2013)” in its place;

■ (b) In the introductory text by removing “As prescribed in 204.1104” and adding “As prescribed in 204.1105” in its place, and removing the word “clause” and adding the word “provision” in its place.

252.211–7007 [Amended]

■ 15. Section 252.211–7007 is amended as follows:

■ a. In paragraph (a), in the definition of “supply condition code” by removing the link “<http://www.dtic.mil/whs/directives/corres/pdf/400025m.pdf>” and adding the link “http://www2.dla.mil/j-6/dlms/e-library/manuals/dlm/dlm_pubs.asp” in its place;

■ b. In paragraph (d)(6) by removing the link “<http://www.dtic.mil/whs/directives/corres/pdf/400025m.pdf>” and adding the link “http://www2.dla.mil/j-6/dlms/e-library/manuals/dlm/dlm_pubs.asp” in its place; and

■ c. In paragraph (g)(1) by removing the link “<https://bpn.gov/iuid>” and adding the link “<https://iuid.logisticsinformationservice.dla.mil/>” in its place.

252.212–7001 [Amended]

■ 16. Section 252.212–7001 is amended—

■ a. In paragraph (b)(2) by removing the clause date “(APR 2012)” and adding “(DEC 2012)” in its place;

■ b. In paragraph (b)(4) by removing the clause date “(JUN 2012)” and adding “(AUG 2012)” in its place; and

■ c. In paragraph (b)(26) by removing the clause date “(MAR 1998)” and adding “(DEC 2012)” in its place.

252.215–7000 [Amended]

■ 17. Section 252.215–7000 is amended—

■ a. In the introductory paragraph by removing “use the followclause” and adding “use the following clause” in its place, and

■ b. By removing “Subcontractor Cost or Pricing Data” and adding “Subcontractor Certified Cost or Pricing Data” in its place.

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 215, 225, and 252**

RIN 0750–AH73

Defense Federal Acquisition Regulation Supplement: Acquisition of Tents and Other Temporary Structures (DFARS Case 2012–D015)

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

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the DFARS to implement sections of the National Defense Authorization Act for Fiscal Year 2012 that address the acquisition of tents and other temporary structures.

DATES: Effective February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Fernell Warren, telephone 571–372–6089.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD published an interim rule in the **Federal Register** (77 FR 38734) on June

29, 2012, to implement sections 368 and 821 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). Section 368 requires award of contracts that provide the best value, when acquiring tents and other temporary structures, regardless of whether purchased by DoD or by another agency on behalf of DoD. Section 821 amends 10 U.S.C. 2533a (the “Berry Amendment”) to extend the restriction requiring acquisition of domestic tents to include the structural components of tents, applicable to acquisitions that exceed the simplified acquisition threshold.

No respondents submitted comments in response to the interim rule.

II. Discussion

Although no written public comments were received, DoD has amended the final rule as follows in response to verbal questions, which indicated possible misinterpretation of the interim rule.

A. Tents and Structural Components of Tents

Question: Does the term “structural components” apply just to tents, or also to tarpaulins and covers?

Response: The vertical listing of the items at 225.7002–1(a)(3) and 252.225–7012(b)(3) ensures clarity that the phrase “structural components” only applies to tents and not also to tarpaulins and covers.

B. Best Value When Acquiring Tents and Other Temporary Structures

Question: Does the Berry Amendment now apply to temporary structures?

Response: The interim rule addressed at DFARS 225.7002–1(a)(3)(i) the requirement to award contracts that provide best value, when acquiring tents and other temporary structures. DFARS 225.7002–1 implements the domestic source restrictions of the Berry Amendment (10 U.S.C. 2533a). However, temporary structures are not covered under the Berry Amendment. Therefore, this requirement relating to best value has been moved to DFARS 215.101, supplementing FAR 15.101, Best value continuum. This will remove any implication that temporary structures are covered by the Berry Amendment.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this final 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.* However, a final regulatory flexibility analysis has been prepared and is summarized as follows:

The objectives of this final rule are to—

- Require that contracts for the acquisition of tents and other temporary structures provide best value, regardless of whether purchased by DoD or by another agency on behalf of DoD; and
- Extend the domestic source restriction of 10 U.S.C. 2533a (the “Berry Amendment”) to cover the structural components of tents, in order to promote the use of domestic materials and enhance growth of the United States economy.

The legal basis for this final rule is sections 368 and 821 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). The requirement to award contracts that provide best value to the Government does not have any impact on small business entities, because that is already a general requirement for all acquisitions.

The domestic source restriction on the structural components of tents does not apply below the simplified acquisition threshold. This restriction may affect approximately 40 or fewer small business concerns at the prime contract level. Review of the Fiscal Year 2011 data on acquisition of items with product or service code 8340 (tents or tarpaulins) identified 49 actions with small business concerns (contracts or orders), estimated value of \$48.6 million, of which about 10 percent appeared to be for other than tents (e.g., prefabricated metal buildings and components, metal household furnishings, or electrical equipment). The Federal Procurement Data System does not provide data on components, so it is not known the extent to which the providers of tents currently utilize

domestic or foreign structural components. An exception may be granted if a component is domestically nonavailable. However, this rule promotes the use of domestic components, and should, therefore, be favorable to small entities that provide domestic structural components of tents. The requirements of the rule for use of domestic components will not apply below the simplified acquisition threshold.

This rule does not impose any reporting or recordkeeping requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD did not identify any significant alternatives that would accomplish the stated objectives of the statute. The rule specifically implements the statutory requirement.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 215, 225, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 215, 225, and 252 which was published at 77 FR 38734 on June 29, 2012, is adopted as a final rule with the following changes:

- 1. The authority citation for 48 CFR parts 215, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

- 2. Subpart 215.1 is added to read as follows:

Subpart 215.1—Source Selection Processes and Techniques

Sec.

225.101 Best value continuum.

215.101–70 Best value when acquiring tents or other temporary structures.

215.101 Best value continuum.

215.101–70. Best value when acquiring tents or other temporary structures.

(a) In accordance with section 368 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), when acquiring tents or other temporary

structures for use by the Armed Forces, the contracting officer shall award contracts that provide the best value. Temporary structures covered by this paragraph are nonpermanent buildings, including tactical shelters, nonpermanent modular or pre-fabricated buildings, or portable or relocatable buildings, such as trailers or equipment configured for occupancy (see also 246.270-2). Determination of best value includes consideration of the total life-cycle costs of such tents or structures, including the costs associated with any equipment, fuel, or electricity needed to heat, cool, or light such tents or structures (see FAR 7.105(a)(3)(i) and PGI 207.105(a)(3)(i)).

(b) The requirements of this section apply to any agency or department that acquires tents or other temporary structures on behalf of DoD (see FAR 17.503(d)(2)).

PART 225—FOREIGN ACQUISITION

■ 3. Section 225.7002-1 is amended by revising paragraph (a)(3) to read as follows:

225.7002-1 Restrictions.

- (a) * * *
- (3)(i) Tents and the structural components of tents;
- (ii) Tarpaulins; or
- (iii) Covers.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 [Amended]

■ 4. Section 252.212-7001 is amended by removing the clause date “(DEC 2012)” and adding “(FEB 2013)” in its place, and in paragraph (b)(9) removing “(DEC 2012)” and adding “(FEB 2013)” in its place.

■ 5. Section 252.225-7012 is amended by removing the clause date “(DEC 2012)” and adding “(FEB 2013)” in its place, and by revising paragraph (b)(3) to read as follows:

252.225-7012 Preference for certain domestic commodities.

- * * * * *
- (b) * * *
- (3)(i) Tents and structural components of tents;
- (ii) Tarpaulins; or
- (iii) Covers.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 219 and 252

[DFARS Case 2009-D002]

RIN 0750-AG40

Defense Federal Acquisition Regulation Supplement; Electronic Subcontracting Reporting System

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

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule, amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to the FAR regarding policy and procedures related to the Electronic Subcontracting Reporting System.

DATES: *Effective* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Lee Renna, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 75 FR 65439 on October 25, 2010, to amend section 219.708, clauses 252.212-7001, 252.219-7003, and 252.219-7004, and sections I-105 and I-112 of Appendix I, to provide DoD-specific procedures and policies related to the Electronic Subcontracting Reporting System (eSRS). There were no comments received in response to the interim rule. Accordingly, the interim rule amending 48 CFR parts 219, 252, and Appendix I, is adopted as a final rule with only minor technical changes at 219.708.

II. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is not a significant regulatory

action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. 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 small businesses are not required to have subcontracting plans and, therefore, are not required to use eSRS to submit reports on their progress in achieving the goals in those plans.

IV. Paperwork Reduction Act.

This final rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 35). This rule provides DoD instructions on how to submit reports that are already required by the FAR and are covered under Office of Management and Budget Clearance Numbers 9000-0006, Subcontracting Plans/Individual subcontract Report (SF 294) and 9000-0007, Summary Contract Report.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 219 and 252, which was published in the **Federal Register** at 75 FR 65439 on October 25, 2010, is adopted a final with the following changes:

PART 219—SMALL BUSINESS PROGRAMS

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

Authority: 41. U.S.C. 1303 and 48 CFR Chapter 1.

■ 2. Section 219.708 is amended by revising paragraph (b)(1) to read as follows:

219.708 Contract clauses.

(b)(1)(A) Except as provided in paragraph (b)(1)(B) of this section, use the clause at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts)—

(1) In solicitations and contracts that contain the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(2) With its Alternate I in contracts that use Alternate III of 52.219-9, Small