

owned, or partially owned, by the People's Republic of China or the People's Liberation Army of the People's Republic of China.

(End of provision)

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DEPARTMENT OF DEFENSE

48 CFR Parts 225, 231, and 242

[DFARS Case 95-D040]

Defense Federal Acquisition Regulation Supplement; Independent Research and Development and Bid and Proposal Costs for Fiscal Year 1996 and Beyond

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 reflect changes to the Federal Acquisition Regulation (FAR) that treat independent research and development and bid and proposal costs for fiscal year 1996 and beyond as fully allowable, subject only to the FAR normal standards of reasonableness and allocability.

EFFECTIVE DATE: February 23, 1999.

FOR FURTHER INFORMATION CONTACT:

Ms. Sandra Haberlin, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703) 602-0350. Please cite DFARS Case 95-D040.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 225.7303-2, 231.205-18, and 242.771 to reflect FAR changes that were published as Item VIII of Federal Acquisition Circular 97-03 (62 FR 64931, December 9, 1997). The FAR changes treat independent research and development and bid and proposal costs for fiscal year 1996 and beyond as fully allowable, subject only to the FAR normal standards of reasonableness and allocability.

A proposed DFARS rule was published on January 3, 1997 (62 FR 374). Two sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final 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 225, 231, and 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225, 231, and 242 are amended as follows:

1. The authority citation for 48 CFR Parts 225, 231, and 242 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

2. Section 225.7303-2 is amended in paragraph (c) introductory text by revising the first sentence to read as follows:

225.7303-2 Cost of doing business with a foreign government or an international organization.

* * * * *

(c) The cost limitations for major contractors on independent research and development and bid and proposal (IR&D/B&P) costs for projects that are of potential interest to DoD, in 231.205-18(c)(iii), do not apply to FMS contracts, except as provided in 225.7303-5. * * *

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PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 231.205-18 is revised to read as follows:

231.205-18 Independent research and development and bid and proposal costs.

(a) *Definitions.* As used in this subsection—

(i) *Covered contract* means a DoD prime contract for an amount exceeding the simplified acquisition threshold, except for a fixed-price contract without cost incentives. The term also includes a subcontract for an amount exceeding the simplified acquisition threshold, except for a fixed-price subcontract

without cost incentives under such a prime contract.

(ii) *Covered segment* means a product division of the contractor that allocated more than \$1,100,000 in independent research and development and bid and proposal (IR&D/B&P) costs to covered contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, the term means that contractor as a whole. A product division of the contractor that allocated less than \$1,100,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year is not subject to the limitations in paragraph (c) of this subsection.

(iii) *Major contractor* means any contractor whose covered segments allocated a total of more than \$11,000,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year. For purposes of calculating the dollar threshold amounts to determine whether a contractor meets the definition of "major contractor," do not include contractor segments allocating less than \$1,100,000 of IR&D/B&P costs to covered contracts during the preceding fiscal year.

(c) *Allowability.*

(i) Departments/agencies shall not supplement this regulation in any way that limits IR&D/B&P cost allowability.

(ii) See 225.7303-2(c) for allowability provisions affecting foreign military sale contracts.

(iii) For major contractors, the following limitations apply:

(A) The amount of IR&D/B&P costs allowable under DoD contracts shall not exceed the lesser of—

(1) Such contracts' allocable share of total incurred IR&D/B&O costs; or
(2) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(B) Allowable IR&D/B&P costs are limited to those for projects that are of potential interest to DoD, including activities intended to accomplish any of the following:

(1) Enable superior performance of future U.S. weapon systems and components.

(2) Reduce acquisition costs and life-cycle costs of military systems.

(3) Strengthen the defense industrial and technology base of the United States.

(4) Enhance the industrial competitiveness of the United States.

(5) Promote the development of technologies identified as critical under 10 U.S.C. 2522.

(6) Increase the development and promotion of efficient and effective applications of dual-use technologies.

(7) Provide efficient and effective technologies for achieving such

environmental benefits as: Improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(iv) For major contractors, the cognizant administrative contracting officer (ACO) or corporate ACO shall—

(A) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(B) Provide the results of the determination to the contractor.

(v) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination (also see 242.771-3).

PART 242—CONTRACT ADMINISTRATION

4. Sections 242.771, 242.771-1, 242.771-2, and 242.771-3 are revised to read as follows:

242.771 Independent research and development and bid and proposal costs.

242.771-1 Scope.

This section implements 10 U.S.C. 2372, Independent research and development and bid and proposal costs: Payments to contractors.

242.771-2 Policy.

Defense contractors are encouraged to engage in independent research and development and bid and proposal (IR&D/B&P) activities of potential interest to DoD, including activities cited in 231.205-18(c)(iii)(B).

242.771-3 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) or corporate ACO shall—

(1) Determine cost allowability of IR&D/B&P costs as set forth in 231.205-18 and FAR 31.205-18.

(2) Determine whether IR&D/B&P projects performed by major contractors (see 231.205-18(a)) are of potential interest to DoD; and

(3) Notify the contractor promptly of any IR&D/B&P activities that are not of potential interest to DoD.

(b) The Defense Contract Management Command of the Defense Logistics Agency or the military department responsible for performing contract administration functions is responsible for providing the Defense Contract Audit Agency (DCAA) with IR&D/B&P statistical information, as necessary, to

assist DCAA in the annual report required by paragraph (c) of this subsection.

(c) DCAA is responsible for submitting an annual report to the Director of Defense Procurement (USD(A&T)DP) setting forth required statistical information relating to the DoD-wide IR&D/B&P program.

(d) The Director, Defense Research and Engineering (USD(A&T)DDR&E), is responsible for establishing a regular method for communication—

(1) From DoD to contractors, of timely and comprehensive information regarding planned or expected DoD future needs; and

(2) From contractors to DoD, of brief technical descriptions of contractor IR&D projects.

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 98-D029]

Defense Federal Acquisition Regulation Supplement; Singapore Accession to Government Procurement Agreement

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 remove the limitation on the eligibility of Singapore as a designated country under the Trade Agreements Act. The limitation previously applied to procurements by the U.S. Army Corps of Engineers. Singapore has acceded to the World Trade Organization Government Procurement Agreement and is now fully eligible under the Trade Agreements Act.

EFFECTIVE DATE: February 23, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703) 602-0350. Please cite DFARS Case 98-D039.

SUPPLEMENTARY INFORMATION:

A. Background

On March 19, 1996 (61 FR 11233), the U.S. Trade Representative directed that products of Singapore be treated as eligible products under the Trade Agreements Act. However, this

treatment was inapplicable to procurements by the Army Corps of Engineers. Singapore's accession to the World Trade Organization Government Procurement Agreement on October 20, 1997, supercedes the previous limitation on Army Corps of Engineers procurements. Therefore, this final rule amends DFARS 225.408, 252.225-7007, and 252.225-7021 to remove the limitation.

B. Regulatory Flexibility Act

The 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, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98-D029.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final 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 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

225.408 [Amended]

2. Section 225.408 is amended in paragraph (a)(ii) by removing the last sentence, and in paragraph (a)(iv) by removing the last sentence.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7021 [Amended]

3. Section 252.225-7007 is amended by removing Alternate I.

252.225-7007 [Amended]

4. Section 252.225-7021 is amended by removing Alternate I.

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