

List of Subjects in 48 CFR Parts 201 and 202

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 201 and 202 as follows:

1. The authority citation for 48 CFR Parts 201 and 202 continues to read as follows:

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

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.105–3 is revised to read as follows:

201.105–3 Copies.

The DFARS and the DFARS Procedures, Guidance, and Information (PGI) are available electronically via the World Wide Web at <http://www.acq.osd.mil/dp/dars/dfars.html>.

3. Section 201.201–70 is added to read as follows:

201.201–70 Maintenance of Procedures, Guidance, and Information.

The DAR Council is also responsible for maintenance of the DFARS Procedures, Guidance, and Information (PGI).

4. Section 201.301 is amended by revising paragraph (a) to read as follows:

201.301 Policy.

(a)(1) DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under authorization and subject to the authority, direction, and control of the Secretary of Defense. The DFARS contains—

- (i) Requirements of law;
- (ii) DoD-wide policies;
- (iii) Delegations of FAR authorities;
- (iv) Deviations from FAR requirements; and

(v) 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.

(2) Relevant procedures, guidance, and information that do not meet the criteria in paragraph (a)(1) of this section are issued in the DFARS Procedures, Guidance, and Information (PGI).

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PART 202—DEFINITIONS OF WORDS AND TERMS

5. Section 202.101 is amended by adding, in alphabetical order, a

definition of “Procedures, Guidance, and Information (PGI)” to read as follows:

202.101 Definitions.

* * * * *

Procedures, Guidance, and Information (PGI) means a companion resource to the DFARS that—

(1) Contains mandatory internal DoD procedures. The DFARS will direct compliance with mandatory procedures using imperative language such as “Follow the procedures at * * *” or similar directive language;

(2) Contains non-mandatory internal DoD procedures and guidance and supplemental information to be used at the discretion of the contracting officer. The DFARS will point to non-mandatory procedures, guidance, and information using permissive language such as “The contracting officer may use * * *” or “Additional information is available at * * *” or other similar language;

(3) Is numbered similarly to the DFARS, except that each PGI numerical designation is preceded by the letters “PGI”; and

(4) Is available electronically at <http://www.acq.osd.mil/dp/dars/dfars.html>.

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[FR Doc. 04–3699 Filed 2–20–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE**48 CFR Parts 203, 209, and 252**

[DFARS Case 2003–D012]

Defense Federal Acquisition Regulation Supplement; Improper Business Practices and Contractor Qualifications Relating to Debarment, Suspension, and Business Ethics

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to streamline and clarify text pertaining to debarment, suspension, and improper business practices. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 23, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at [http://](http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm)

emissary.acq.osd.mil/dar/dfars.nsf/pubcomm. As an alternative, respondents may e-mail comments to: dfars@osd.mil. Please cite DFARS Case 2003–D012 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D012.

At the end of the comment period, interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296.

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/dp/dars/transf.htm>.

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

- Consolidation of requirements for reporting violations and suspected violations of certain requirements into a new section at DFARS 203.070. This results in elimination of DFARS sections 203.103, 203.103–2, and 203.104–10; subparts 203.2, 203.3, and 203.4; and sections 203.502 and 203.570–4.

- Streamlining of text at DFARS 203.570–1 and 203.570–2 relating to prohibitions on persons convicted of fraud or other defense-contract-related felonies.

- Revision of the clause at 252.203–7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, to remove unnecessary references to first-tier subcontracts in

paragraphs (b) and (d). Paragraph (g) of the clause adequately addresses requirements for flow down to first-tier subcontracts.

- Deletion of text at DFARS 203.570–3 relating to internal DoD procedures for waiver of the 5-year period for prohibitions on persons convicted of fraud or other defense-contract-related felonies; and deletion of text at DFARS 209.105–2, 209.406–3, and 209.407–3 containing internal DoD procedures for referral of matters to agency debarment and suspension officials. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A proposed rule describing the purpose and structure of PGI is published elsewhere in this issue of the **Federal Register** under DFARS Case 2003–D090, Procedures, Guidance, and Information.

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 does not expect this 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.*, because the rule streamlines and clarifies existing regulations, with no substantive change in policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D012.

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 203, 209, and 252

Government procurement.

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

Therefore, DoD proposes to amend 48 CFR Parts 203, 209, and 252 as follows:

1. The authority citation for 48 CFR Parts 203, 209, and 252 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 203.070 is added to read as follows:

203.070 Reporting of violations and suspected violations.

Report violations and suspected violations of the following requirements in accordance with 209.406–3 or 209.407–3 and DoDD 7075.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities:

- (a) Certificate of Independent Price Determination (FAR 3.103).
- (b) Procurement integrity (FAR 3.104).
- (c) Gratuities clause (FAR Subpart 203.2).
- (d) Antitrust laws (FAR 3.303).
- (e) Covenant Against Contingent Fees (FAR 3.405).
- (f) Anti-kickback Act (FAR 3.502).
- (g) Prohibitions on persons convicted of defense-related contract felonies (203.570).

203.103, 203.103–2, and 203.104–10 [Removed]

3. Sections 203.103, 203.103–2, and 203.104–10 are removed.

Subparts 203.2 through 203.4 [Removed]

4. Subparts 203.2 through 203.4 are removed.

203.502 [Removed]

5. Section 203.502 is removed.
6. Sections 203.570–1 and 203.570–2 are revised to read as follows:

203.570–1 Scope.

This subpart implements 10 U.S.C. 2408.

203.570–2 Prohibition period.

DoD has sole responsibility for determining the period of the prohibition described in paragraph (b) of the clause at 252.203–7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies. The prohibition period—

(a) Shall not be less than 5 years from the date of conviction unless the agency head or a designee grants a waiver in the interest of national security. Follow the waiver procedures at PGI 203.570–2(a); and

(b) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency shall provide a copy of the determination to the address at PGI 203.570–2(b).

203.570–3 and 203.570–4 [Removed]

7. Sections 203.570–3 and 203.570–4 are removed.

203.570–5 [Redesignated as 203.570–3]

8. Section 203.570–5 is redesignated as 203.570–3.

PART 209—CONTRACTOR QUALIFICATIONS

9. Section 209.105–2 is revised to read as follows:

209.105–2 Determinations and documentation.

(a) For guidance on submission of determinations to the appropriate debarment and suspending official, see PGI 209.105–2(a).

10. Section 209.406–3 is revised to read as follows:

209.406–3 Procedures.

Refer all matters appropriate for consideration by an agency debarment and suspending official as soon as practicable to the appropriate debarment and suspending official identified in 209.403. Any person may refer a matter to the debarment and suspending official. Follow the procedures at PGI 209.406–3.

11. Section 209.407–3 is revised to read as follows:

209.407–3 Procedures.

Refer all matters appropriate for consideration by an agency debarment and suspending official as soon as practicable to the appropriate debarment and suspending official identified in 209.403. Any person may refer a matter to the debarment and suspending official. Follow the procedures at PGI 209.407–3.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 252.203–7001 is amended by revising the introductory text, clause date, paragraph (b), paragraph (d) introductory text, and paragraph (h) to read as follows:

252.203–7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies.

As prescribed in 203.570–3, use the following clause:

Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (XXX 2004)

* * * * *

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving—

(1) In a management or supervisory capacity on this contract;

(2) On the board of directors of the Contractor;

(3) As a consultant, agent, or representative for the Contractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.

* * * * *

(d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—

* * * * *

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (301) 809-4904.

(End of clause)

[FR Doc. 04-3703 Filed 2-20-04; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Parts 205, 226, 235, and 252

[DFARS Case 2003-D016]

Defense Federal Acquisition Regulation Supplement; Publicizing Contract Actions

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to publicizing contract actions. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 23, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@osd.mil. Please cite DFARS Case 2003-D016 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC

20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2003-D016.

At the end of the comment period, interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602-0326.

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/dp/dars/transf.htm>.

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

- Deletion of text at DFARS 205.207(d)(ii) containing a notice to be included in acquisitions being considered for historically black college and university and minority institution (HBCU/MI) set-aside. This notice will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), with retention of a policy statement in DFARS 205.207 regarding use of the notice, and addition of a policy statement at DFARS 226.7003-2(c) regarding the requirement for an interested HBCU/MI to provide evidence of its capability and eligibility (which is also addressed in the notice). A proposed rule describing the purpose and structure of PGI is published elsewhere in this issue of the **Federal Register** under DFARS Case 2003-D090, Procedures, Guidance, and Information.

- Redesignation of DFARS 205.207(d)(iii) as 205.207(d)(ii), and deletion of text that duplicates policy found in 235.016. A reference to 236.016 has been retained in newly designated 205.207(d)(ii).

- Deletion of unnecessary text at DFARS 205.207(e), 205.470-1, and 205.502. The clause prescription at 205.470-2 is redesignated as 205.470 and amended to include a statutory reference.

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 does not expect this 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.*, because the rule updates and relocates DFARS text, with no substantive change in policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D016.

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 205, 226, 235 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 205, 226, 235, and 252 as follows:

1. The authority citation for 48 CFR Parts 205, 226, 235, and 252 continues to read as follows:

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

PART 205—PUBLICIZING CONTRACT ACTIONS

2. Section 205.207 is revised to read as follows:

205.207 Preparation and transmittal of synopses.

(d)(i) For acquisitions being considered for historically black college and university and minority institution set-asides under 226.7003—

(A) Cite the appropriate Numbered Note; and

(B) Include the notice at PGI 205.207(d)(i).

(ii) For broad agency announcement notices, see 235.016.

3. Section 205.470 is revised to read as follows: