

Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, 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 2004-D005.

### 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 208, 210, 219, and 252

Government procurement.

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

- Therefore, 48 CFR parts 208, 210, 219, and 252 are amended as follows:
- 1. The authority citation for 48 CFR parts 208, 210, 219, and 252 continues to read as follows:

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

#### PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

##### Subpart 208.6—[Removed]

- 2. Subpart 208.6 is removed.

##### PART 210—[REMOVED]

- 3. Part 210 is removed.

#### PART 219—SMALL BUSINESS PROGRAMS

##### 219.502-70 [Removed]

- 4. Section 219.502-70 is removed.

##### 219.508 [Removed]

- 5. Section 219.508 is removed.

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

##### 252.219-7005 and 252.219-7006 [Removed and Reserved]

- 6. Sections 252.219-7005 and 252.219-7006 are removed and reserved.

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 212

[DFARS Case 2003-D106]

#### Defense Federal Acquisition Regulation Supplement; Transition of Weapons-Related Prototype Projects to Follow-On Contracts

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 847 of the National Defense Authorization Act for Fiscal Year 2004. Section 847 authorizes DoD to carry out a pilot program that permits the use of streamlined contracting procedures for the production of items or processes begun as prototype projects under other transaction agreements.

**DATES:** *Effective date:* November 1, 2004.

*Comment date:* Comments on the interim rule should be submitted to the address shown below on or before January 3, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D106, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003-D106 in the subject line of the message.

- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0328.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule adds a new DFARS subpart to implement Section 847 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136).

Section 847 authorizes DoD to carry out a pilot program for follow-on contracting for the production of items or processes begun as prototype projects under other transaction agreements. Contracts and subcontracts awarded under the program may be treated as those for the acquisition of commercial items; and items or processes acquired under the program may be treated as developed in part with Federal funds and in part at private expense for purposes of negotiating rights in technical data.

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 applies only to production contracts for DoD weapons and weapon systems. Such contracts typically are not awarded to small business concerns. 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-D106.

### 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.*

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 847 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 847 authorizes DoD to carry out a pilot program that permits the use of streamlined contracting procedures for the production of items or processes begun as prototype projects under other transaction agreements. The program is intended to ease the transition of nontraditional defense contractors from prototype transactions to standard

contracts. Section 847 became effective upon enactment on November 24, 2003, and expires on September 30, 2008. Comments received in response to this interim rule will be considered in the formation of the final rule.

#### List of Subjects in 48 CFR Part 212

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 212 is amended as follows:

■ 1. The authority citation for 48 CFR part 212 continues to read as follows:

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

#### PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.212 is added to read as follows:

##### 212.212 Computer software.

The DoD policy for acquiring commercial computer software is at 227.7202.

■ 3. Subpart 212.70 is added to read as follows:

#### Subpart 212.70—Pilot Program for Transition to Follow-On Contracting After Use of Other Transaction Authority

Sec.

212.7000 Scope.

212.7001 Definitions.

212.7002 Pilot program.

212.7002-1 Contracts under the program.

212.7002-2 Subcontracts under the program.

212.7003 Rights in technical data and computer software.

##### 212.7000 Scope.

This subpart establishes the pilot program authorized by Section 847 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136).

##### 212.7001 Definitions.

As used in this subpart—

*Nontraditional defense contractor* means a business unit that—

(1) Has entered into an other transaction agreement with DoD; and  
(2) Has not, for a period of at least 1 year prior to the date of the other transaction agreement, entered into or performed on—

(i) Any contract that is subject to full coverage under the cost accounting standards described in FAR Part 30; or  
(ii) Any other contract exceeding \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency that is subject to the FAR.

*Other transaction* means a transaction that—

(1) Is other than a contract, grant, or cooperative agreement;  
(2) Is not subject to the FAR or its supplements; and  
(3) Is entered into in accordance with 32 CFR part 3.

##### 212.7002 Pilot program.

##### 212.7002-1 Contracts under the program.

(a) The contracting officer may use FAR part 12 procedures to award a contract for an item or process that does not meet the definition of “commercial item,” if the contract—

(1) Is awarded to a nontraditional defense contractor;  
(2) Is a follow-on contract for the production of an item or process begun as a prototype project under an other transaction agreement;  
(3) Does not exceed \$50,000,000;  
(4) Is awarded on or before September 30, 2008; and  
(5) Is either—  
(i) A firm-fixed-price contract; or  
(ii) A fixed-price contract with economic price adjustment.  
(b) See 212.7003 for special procedures pertaining to rights in technical data and computer software.

##### 212.7002-2 Subcontracts under the program.

Except as provided in 212.7003, a subcontract for an item or process that does not meet the definition of “commercial item” may be treated as a subcontract for a commercial item, if the subcontract—

(a) Is under a contract awarded in accordance with 212.7002-1;  
(b) Is awarded to a nontraditional defense contractor; and  
(c) Is either—  
(1) A firm-fixed-price subcontract; or  
(2) A fixed-price subcontract with economic price adjustment.

##### 212.7003 Rights in technical data and computer software.

For purposes of determining rights in technical data under 227.7102 and rights in computer software under 227.7202, items or processes acquired under a contract or subcontract awarded in accordance with 212.7002 may be treated as developed in part with Federal funds and in part at private expense (*i.e.*, mixed funding). When this occurs—

(a) For technical data, use the clauses at 252.227-7013, Rights in Technical Data—Noncommercial Items, and 252.227-7037, Validation of Restrictive Markings on Technical Data;  
(b) For computer software, use the clauses at 252.227-7014, Rights in

Noncommercial Computer Software and Noncommercial Computer Software Documentation, and 252.227-7019, Validation of Asserted Restrictions—Computer Software;

(c) Require the contractor to include the clauses prescribed by paragraphs (a) and (b) of this section in subcontracts awarded in accordance with 212.7002-2; and

(d) Negotiate for the appropriate technical data and computer software deliverables and special license rights in those deliverables, in view of the parties' relative contributions to the development of the items or processes.

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 212

[DFARS Case 2003-D018]

#### Defense Federal Acquisition Regulation Supplement; Laws Inapplicable to Commercial Subcontracts

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the Trade Agreements Act and the Buy American Act from the list of laws inapplicable to subcontracts for commercial items. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Effective November 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2003-D018.

#### 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