

sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Minnesota, is amended by adding DTV channel \*23 and removing DTV channel \*26 at St. Paul.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9-16871 Filed 7-14-09; 8:45 am]

BILLING CODE 6712-01-P

#### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Parts 202, 212, and 234

RIN 0750-AG23

#### Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items (DFARS Case 2008-D011)

**AGENCY:** Defense Acquisition Regulations System, 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 Sections 805 and 815 of the National Defense Authorization Act for Fiscal Year 2008. The rule specifies the conditions under which a time-and-materials or labor-hour contract may be used for the acquisition of commercial items. In addition, the rule addresses the conditions under which major weapon systems and subsystems may be treated as commercial items.

**DATES:** *Effective date:* July 15, 2009.

**Comment date:** Comments on the interim rule should be submitted in writing to the address shown below on or before September 14, 2009, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2008-D011, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2008-D011 in the subject line of the message.

- *Fax:* 703-602-7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Angie Sawyer, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

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

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Sawyer, 703-602-8384.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule implements Sections 805 and 815 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 805 specifies the types of commercial item acquisitions for which time-and-materials and labor-hour contracts may be used. Section 815 addresses the situations under which major weapon systems, subsystems of major weapon systems, and components and spare parts for major weapon systems may be acquired using procedures established for the acquisition of commercial items. In addition, Section 815 requires DoD to modify its regulations to clarify that the terms “general public” and “non-governmental entities,” with regard to sales of commercial items, do not include the Federal Government or a State, local, or foreign government.

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 reinforces existing requirements for the appropriate use of

commercial acquisition procedures and for ensuring that contract prices are fair and reasonable. 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 2008-D011.

##### 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 Sections 805 and 815 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 805 requires DoD to modify its acquisition regulations to ensure that time-and-materials and labor-hour contracts are used for commercial items only under certain specified circumstances. Section 815 limits the conditions under which major weapon systems, subsystems of major weapon systems, and components and spare parts of major weapon systems may be treated as commercial items and acquired under procedures established for the acquisition of commercial items. In addition, Section 815 requires DoD to modify its regulations on the acquisition of commercial items to clarify that the terms “general public” and “non-governmental entities” do not include the Federal Government or a State, local, or foreign government. Comments received in response to this interim rule will be considered in the formation of the final rule.

#### List of Subjects in 48 CFR Parts 202, 212, and 234

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR Parts 202, 212, and 234 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 202, 212, and 234 continues to read as follows:

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

## PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Section 202.101 is amended by adding a definition of *General public and non-governmental entities* in alphabetical order to read as follows:

### 202.101 Definitions.

\* \* \* \* \*

*General public and non-governmental entities*, as used in the definition of *commercial item* at FAR 2.101, do not include the Federal Government or a State, local, or foreign government (Pub. L. 110–181, Section 815(b)).

\* \* \* \* \*

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Section 212.207 is added to read as follows:

### 212.207 Contract type.

(b) In accordance with Section 805 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), use of time-and-materials and labor-hour contracts for the acquisition of commercial items is authorized only for the following:

- (i) Services acquired for support of a commercial item.
- (ii) Emergency repair services.
- (iii) Any other commercial services only to the extent that the head of the agency concerned approves a written determination by the contracting officer that—

(A) The services to be acquired are commercial;

(B) If the services to be acquired are subject to FAR 15.403–1(c)(3)(ii), the offeror of the services has submitted sufficient information in accordance with that subsection;

(C) Such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

(D) The use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

## PART 234—MAJOR SYSTEM ACQUISITION

■ 4. Section 234.7002 is revised to read as follows:

### 234.7002 Policy.

(a) *Major weapon systems.* (1) A DoD major weapon system may be treated as a commercial item, or acquired under procedures established for the acquisition of commercial items, only if—

(i) The Secretary of Defense determines that—

(A) The major weapon system is a commercial item as defined in FAR 2.101; and

(B) Such treatment is necessary to meet national security objectives;

(ii) The offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such a system; and

(iii) The congressional defense committees are notified at least 30 days before such treatment or acquisition occurs. Follow the procedures at PGI 234.7002.

(2) The authority of the Secretary of Defense to make a determination under paragraph (a)(1) of this section may not be delegated below the level of the Deputy Secretary of Defense.

(b) *Subsystems.* A subsystem of a major weapon system (other than a commercially available off-the-shelf item) may be treated as a commercial item and acquired under procedures established for the acquisition of commercial items only if—

(1) The subsystem is intended for a major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial items in accordance with paragraph (a) of this section; or

(2) The contracting officer determines in writing that—

(i) The subsystem is a commercial item; and

(ii) The offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the subsystem.

(c) *Components and spare parts.* (1) A component or spare part for a major weapon system (other than a commercially available off-the-shelf item) may be treated as a commercial item only if—

(i) The component or spare part is intended for—

(A) A major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial items in accordance with paragraph (a) of this section; or

(B) A subsystem of a major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial items in accordance with paragraph (b) of this section; or

(ii) The contracting officer determines in writing that—

(A) The component or spare part is a commercial item; and

(B) The offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the component or spare part.

(2) This paragraph (c) shall apply only to components and spare parts that are acquired by DoD through a prime contract or a modification to a prime contract, or through a subcontract under a prime contract or modification to a prime contract on which the prime contractor adds no, or negligible, value.

(d) *Relevant information.* To the extent necessary to make a determination under paragraph (a)(1)(ii), (b)(2), or (c)(1)(ii) of this section, the contracting officer may request the offeror to submit—

(1) Prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers; and

(2) Other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates, if the contracting officer determines that the information described in paragraph (d)(1) of this section is not sufficient to determine price reasonableness.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 204, 219, 225, and 252

### Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update references within the DFARS text.

**DATES:** *Effective Date:* July 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

**SUPPLEMENTARY INFORMATION:** This final rule amends DFARS text as follows:

- 204.7202–2, 219.708, 219.1204, and 225.1101. Updates cross-references.