

■ 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 7050.5, 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 3.203).
- (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. Section 203.502–2 is amended by revising the heading to read as follows:

#### **§ 203.502–2 Subcontractor kickbacks.**

\* \* \* \* \*

■ 7. 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]**

■ 8. Sections 203.570–3 and 203.570–4 are removed.

### **§ 203.570–5 [Redesignated as 203.570–3]**

■ 9. Section 203.570–5 is redesignated as section 203.570–3.

## **PART 209—CONTRACTOR QUALIFICATIONS**

■ 10. 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 debarring and suspending official, see PGI 209.105–2(a).

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

#### **§ 209.406–3 Procedures.**

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

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

#### **§ 209.407–3 Procedures.**

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

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

■ 13. 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 (Dec 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)

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## **DEPARTMENT OF DEFENSE**

### **48 CFR Part 206**

[DFARS Case 2003–D017]

### **Defense Federal Acquisition Regulation Supplement; Competition Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to competition requirements. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** December 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326;

facsimile (703) 602-0350. Please cite DFARS Case 2003-D017.

#### 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/dpap/dfars/transf.htm>.

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

- Revision of DFARS 206.001 to clarify the text.
- Deletion of text at DFARS 206.202(b) regarding documentation needed to support a DoD determination to exclude a particular source from a contract action in order to establish or maintain an alternative source of supplies or services; and deletion of text at DFARS 206.302-2 containing examples of circumstances under which use of other than full and open competition may be appropriate due to unusual and compelling urgency. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.
- Deletion of obsolete text at DFARS 206.302-1(b)(4) and deletion of unnecessary text at DFARS 206.303-1(b) and (c) and 206.303-2.

DoD published a proposed rule at 69 FR 8149 on February 23, 2004. DoD received one comment on the proposed rule. The respondent recommended further revision of the text at 206.001 to clarify that the exception from competition authorized by 10 U.S.C. 1091 applies only to contracts awarded to individuals. DoD has included this clarification in the final rule.

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 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 the DFARS changes in this rule are limited to clarifying revisions or deletion of text that is unnecessary or internal to DoD.

##### 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 Part 206

Government procurement.

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

■ Therefore, 48 CFR Part 206 is amended as follows:

■ 1. The authority citation for 48 CFR Part 206 continues to read as follows:

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

##### PART 206—COMPETITION REQUIREMENTS

■ 2. Section 206.001 is revised to read as follows:

###### 206.001 Applicability.

(b) As authorized by 10 U.S.C. 1091, contracts awarded to individuals using the procedures at 237.104(b)(ii) are exempt from the competition requirements of FAR Part 6.

■ 3. Section 206.202 is revised to read as follows:

###### 206.202 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F shall identify the source to be excluded from the contract action. Include the information at PGI 206.202(b), as applicable, and any other information that may be pertinent, in the supporting documentation.

###### 206.302-1 [Amended]

■ 4. Section 206.302-1 is amended by removing paragraph (b)(4).

■ 5. Section 206.302-2 is revised to read as follows:

###### 206.302-2 Unusual and compelling urgency.

(b) *Application.* For guidance on circumstances under which use of this authority may be appropriate, see PGI 206.302-2(b).

###### 206.303-1 [Amended]

■ 6. Section 206.303-1 is amended by removing paragraphs (b) and (c).

###### 206.303-2 [Removed]

■ 7. Section 206.303-2 is removed.

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#### DEPARTMENT OF DEFENSE

#### 48 CFR Parts 212, 213, 225, and 252

[DFARS Case 2003-D088]

#### Defense Federal Acquisition Regulation Supplement; Free Trade Agreements—Chile and Singapore

**AGENCY:** 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 implement new Free Trade Agreements with Chile and Singapore, as approved by Congress in the United States-Chile Free Trade Agreement Implementation Act and the United States-Singapore Free Trade Agreement Implementation Act. The new Free Trade Agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials from Chile and Singapore, and specify procurement procedures designed to ensure fairness.

**EFFECTIVE DATE:** December 15, 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-D088.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim DFARS rule at 69 FR 126 on January 13, 2004, to implement new Free Trade Agreements with Chile and Singapore, in accordance with the United States-Chile Free Trade Agreement Implementation Act (Public Law 108-77) and the United States-Singapore Free Trade Agreement Implementation Act (Public Law 108-78). Applicable changes to the Federal Acquisition Regulation (FAR) were published in Federal Acquisition Circular (FAC) 2001-19 on January 7, 2004 (69 FR 1051; Interim rule), and in FAC 2001-25 on October 5, 2004 (69 FR 59700; Final rule).