

mandatory for use, in accordance with 207.171(d) of this final rule.

2. *Comment:* Transfer of the component breakout requirements to a guidance document, as opposed to maintaining a regulatory requirement, would de-emphasize the importance of tracking this type of information. Without such information, DoD would not be able to ensure its compliance with existing domestic source laws and regulations. In addition, de-emphasizing the importance of this information would be inconsistent with the on-going U.S. initiative on limiting the adverse effects of offsets in defense procurement. Since the issue of offsets is integrally entwined with foreign and domestic sources of major weapons systems and components, the ability to establish a baseline for components would be impaired by de-emphasizing the requirement to track the breakout of components.

DoD Response: DoD believes that the final rule actually emphasizes the importance of component breakout since, prior to this rule, there was no reference to component breakout or Appendix D in any of the numbered sections of the DFARS. In addition, DoD's ability to ensure compliance with existing domestic source laws and regulations, or to track the effect of offsets, is not related to component breakout procedures. Appendix D does not require any breaking out of data, nor does it require tracking of data on components. While unrelated to component breakout, DFARS 225.7307 specifies that DoD does not encourage, enter into, or commit U.S. firms to foreign military sales offset arrangements. The only discernable connection between component breakout policy and offsets is that U.S. industry would not be able to offer components for manufacture in a foreign country under offset arrangements if DoD breaks out the component for direct procurement by DoD. This connection in no way affects DoD's component breakout policy or the decision regarding placement of breakout procedures in PGI.

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 rule makes no significant change to DoD policy for breakout of

components of end items for future acquisitions.

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 207

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 207 and Appendix D to Chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR part 207 and Appendix D to subchapter I continues to read as follows:

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

PART 207—ACQUISITION PLANNING

■ 2. Sections 207.171 through 207.171–4 are added to read as follows:

207.171 Component breakout.

207.171–1 Scope.

(a) This section provides policy for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

(b) This section does not apply to—

- (1) The initial decisions on Government-furnished equipment or contractor-furnished equipment that are made at the inception of an acquisition program; or
- (2) Breakout of parts for replenishment (see Appendix E).

207.171–2 Definition.

Component, as used in this section, includes subsystems, assemblies, subassemblies, and other major elements of an end item; it does not include elements of relatively small annual acquisition value.

207.171–3 Policy.

DoD policy is to break out components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, the agency shall break out that component if—

(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, the agency shall consider breakout of the component if substantial net cost savings will result from—

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed \$1 million for the current year's requirement.

207.171–4 Procedures.

Agencies shall follow the procedures at PGI 207.171–4 for component breakout.

Appendix D to Chapter 2 [Removed and Reserved]

■ 3. Appendix D to Chapter 2 is removed and reserved.

[FR Doc. 06–2642 Filed 3–20–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207, 208, 216, 217, and 237

[DFARS Case 2002–D024]

Defense Federal Acquisition Regulation Supplement; Approval of Service Contracts and Task and Delivery Orders

AGENCY: Defense Acquisition Regulations System, 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 Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 and Section 854 of the National Defense Authorization Act for Fiscal Year 2005. Section 801(b) requires DoD to establish and implement a management structure for the procurement of services. Section 854 requires DoD agencies to comply with certain review and approval requirements before using a non-DoD

contract to procure supplies or services in amounts exceeding the simplified acquisition threshold.

DATES: Effective March 21, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2002-D024.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 56563 on October 1, 2003, to implement Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107). The rule established requirements for DoD to obtain certain approvals before acquiring services through use of a DoD contract or task order that is not performance based, or through any contract or task order that is awarded by an agency other than DoD.

Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375) placed additional restrictions on the use of contracts awarded by an agency other than DoD in amounts exceeding the simplified acquisition threshold. DoD published a second interim rule at 70 FR 29640 on May 24, 2005, containing changes resulting from public comments received on the interim rule published on October 1, 2003; changes implementing Section 854 of Public Law 108-375; and changes implementing the requirements of a DoD policy memorandum dated October 29, 2004, on the proper use of non-DoD contracts for the acquisition of supplies and services.

One industry association submitted comments on the interim rule published on May 24, 2005. The association supported the rule, but provided additional comments containing suggestions for improvement. A discussion of the comments is provided below.

1. *Comment:* DoD should extend the requirements of the rule to task and delivery orders placed by DoD under another defense agency's contract.

DoD Response: The rule is intended to resolve specific systemic problems regarding the use of non-DoD contracts, i.e., orders placed under non-DoD contracts were not consistent with DoD-unique statutory and regulatory requirements. DoD is not aware of any similar problems for direct or assisted buys under DoD contracts. DoD believes that the existing controls and

procedures are adequate to ensure that orders placed by DoD under DoD contracts are consistent with DoD-unique statutory and regulatory requirements.

2. *Comment:* The rule would be stronger if the requirement at DFARS 207.105(b)(4), to document in the acquisition plan the method to be used to ensure that orders under non-DoD contracts are consistent with DoD-unique statutory and regulatory requirements, also said "including the review and approval requirements of Subpart 217.78."

DoD Response: DFARS Subpart 217.78 requires agencies to establish and maintain procedures for reviewing and approving orders under non-DoD contracts. It does not contain the specific review and approval requirements, which vary by department and agency. This DFARS rule requires contracting officers to address the method of ensuring that statutory and regulatory requirements will be met, which should be consistent with the agency procedures established in accordance with Subpart 217.78.

3. *Comment:* DoD should promptly create accompanying Procedures, Guidance, and Information (PGI) coverage, particularly for the data collection elements required by DFARS 217.7802(e).

DoD Response: DoD has established corresponding PGI coverage at <http://www.acq.osd.mil/dpap/dars/pgi/index.htm> (PGI 217.7802(e)) to address requirements for reporting of data on the use of assisted acquisition. In addition, DoD has amended the DFARS rule at 208.404(a)(i), 216.505(1), 217.7802(e), and 237.170-2(b) to add references to these reporting requirements.

4. *Comment:* The supplementary information accompanying the final rule should address the memorandum issued by the Director of Defense Procurement and Acquisition Policy on June 17, 2005, entitled "Proper Use of Non-DoD Contracts," and the supplemental memoranda issued by the military departments and defense agencies.

DoD Response: The new PGI coverage contains a link to the Defense Procurement and Acquisition Policy Web site on Proper Use of Non-DoD Contract Vehicles at <http://www.acq.osd.mil/dpap/specificpolicy/index.htm>. This Web site contains links to the referenced memoranda and other relevant 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 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 rule contains internal DoD approval requirements, intended to ensure that acquisitions of supplies and services are accomplished in accordance with existing statutes and regulations.

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 207, 208, 216, 217, and 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR part 237, which was published at 68 FR 56563 on October 1, 2003, and the interim rule amending 48 CFR parts 207, 208, 216, 217, and 237, which was published at 70 FR 29640 on May 24, 2005, are adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 207, 208, 216, 217, and 237 continues to read as follows:

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

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Section 208.404 is amended by revising the section heading and paragraph (a)(i) to read as follows:

208.404 Use of Federal Supply Schedules.

(a)(i) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with subpart 217.78 when placing orders for supplies or services in amounts exceeding the simplified acquisition threshold.

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PART 216—TYPES OF CONTRACTS

■ 3. Section 216.505 is amended by revising paragraph (1) to read as follows:

216.505 Ordering.

(1) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with Subpart 217.78 when placing orders under non-DoD contracts

in amounts exceeding the simplified acquisition threshold.

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PART 217—SPECIAL CONTRACTING METHODS

■ 4. Section 217.7802 is amended by revising paragraph (e) to read as follows:

217.7802 Policy.

* * * * *

(e) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements at PGI 217.7802.

PART 237—SERVICE CONTRACTING

■ 5. Section 237.170–2 is amended by revising paragraph (b) to read as follows:

237.170–2 Approval requirements.

* * * * *

(b) *Acquisition of services through use of a contract or task order issued by a non-DoD agency.* Comply with the review, approval, and reporting requirements established in accordance with Subpart 217.78 when acquiring services through use of a contract or task order issued by a non-DoD agency.

[FR Doc. 06–2644 Filed 3–20–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207, 210, and 219

[DFARS Case 2003–D109]

Defense Federal Acquisition Regulation Supplement; Consolidation of Contract Requirements

AGENCY: Defense Acquisition Regulations System, 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 Section 801 of the National Defense Authorization Act for Fiscal Year 2004. Section 801 places restrictions on the consolidation of two or more requirements of a DoD department, agency, or activity into a single solicitation and contract with a total value exceeding \$5,000,000.

DATES: Effective March 21, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062

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SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 69 FR 55986 on September 17, 2004, to implement 10 U.S.C. 2382, as added by Section 801 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). 10 U.S.C. 2382 places restrictions on the consolidation of two or more requirements of a DoD department, agency, or activity into a single solicitation and contract with a total value exceeding \$5,000,000. Twenty-two respondents submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* Four respondents indicated that the difference between consolidation of contract requirements and contract bundling is unclear.

DoD Response: The definitions of the two terms are similar, because all bundles are consolidations. However, not all consolidations are bundles. The definition of “bundle” requires that previous contracts for the item were either performed by small business concerns or were suitable for small business concerns, whereas the definition of “consolidation” does not contain this requirement.

2. *Comment:* One respondent requested clarification regarding the definition of “consolidation.” The respondent interpreted the phrase “two or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited” to mean that, if the cost of one contract for two or more requirements is less than the cost of two or more separate contracts, the acquisition would be outside the definition of consolidation.

DoD Response: Agree that the phrase could lead to multiple interpretations. To ensure that the rule is applied where appropriate, the phrase has been excluded from the final rule.

3. *Comment:* One respondent stated that the rule does not consider varying quantities between the previous buy and the current acquisition; and does not consider when the previous buys were made, i.e., a year ago or five years ago. This could make a big difference in comparing costs.

DoD Response: The definition included in the final rule eliminates the need for cost comparisons.

4. *Comment:* Four respondents stated that the term “consolidation of contract requirements” is not clear with regard to what is meant by “requirements” and

whether or not a different acquisition strategy would be considered a new requirement, such as combining sustaining engineering with system maintenance of the same system.

DoD Response: The DFARS rule follows the legislative definition for consolidation of contract requirements, which addresses a single award covering requirements previously provided under more than one award. DoD believes that the definition is clear, but exercise of judgment may be necessary in some cases to determine whether the requirement has previously been provided.

5. *Comment:* One respondent asked for clarification regarding whether the rule applies to orders.

DoD Response: Under GSA Schedules, DoD activities place orders, but the actual contract (Schedule) is put in place by GSA. A literal reading of the interim rule would be that the DoD senior procurement executive’s determination must be made when the Schedule itself is awarded. The final rule clarifies that the rule applies to orders placed under GSA Schedules.

6. *Comment:* One respondent asked who the senior procurement official is.

DoD Response: The rule uses the term “senior procurement executive.” This term is defined at DFARS 202.101, which specifies the department/agency officials that hold this title.

7. *Comment:* Seven respondents recommended delegation of the senior procurement executive’s authority to determine that contract consolidation is necessary and justified.

DoD Response: The rule does not prohibit delegation of this authority. Therefore, in accordance with FAR 1.108(b), departments and agencies may delegate this authority as deemed appropriate.

8. *Comment:* One respondent stated that the requirement to file the determination in the contract file is unnecessary and should be deleted, because the contracting officer would do this without having it be required.

DoD Response: Due to the specific requirement of 10 U.S.C. 2382 to ensure that decisions regarding consolidation are necessary and justified, DoD believes it is appropriate for this DFARS rule to address the need for supporting documentation.

9. *Comment:* One respondent requested that the requirement for inclusion of the senior procurement executive’s determination in the contract file be satisfied by including the determination in the acquisition plan.

DoD Response: The senior procurement executive may, if desired,