

Noncontiguous Trade, in solicitations that require a covered vessel for carriage of cargo for DoD. See 247.573–3 for reporting of the information received from offerors in response to the provision. See 247.573–2(c)(3) for the required evaluation criterion.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Section 252.247–7026 is amended by revising the clause date and paragraphs (a) through (c) to read as follows:

**252.247–7026 Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.**

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### EVALUATION PREFERENCE FOR USE OF DOMESTIC SHIPYARDS—APPLICABLE TO ACQUISITION OF CARRIAGE BY VESSEL FOR DOD CARGO IN THE COASTWISE OR NONCONTIGUOUS TRADE (NOV 2008)

(a) *Definitions.* As used in this provision—  
*Covered vessel* means a vessel—

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 12101, 12132, and 55102), commonly referred to as “Jones Act”; 46 U.S.C. 12102, 12112, and 12119; and Section 2 of the Shipping Act, 1916 (46 U.S.C. 50501).

*Foreign shipyard* means a shipyard that is not a U.S. shipyard.

*Overhaul, repair, and maintenance work* means work requiring a shipyard period greater than or equal to 5 calendar days.

*Shipyard* means a facility capable of performing overhaul, repair, and maintenance work on covered vessels.

*U.S. shipyard* means a shipyard that is located in any State of the United States or in Guam.

(b) This solicitation includes an evaluation criterion that considers the extent to which the offeror has had overhaul, repair, and maintenance work for covered vessels performed in U.S. shipyards.

(c) The offeror shall provide the following information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years:

(1) Name of vessel.

(2) Description and cost of qualifying shipyard work performed in U.S. shipyards.

(3) Description and cost of qualifying shipyard work performed in foreign shipyards and whether—

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

(4) Names of shipyards that performed the work.

(5) Inclusive dates of work performed.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 216

RIN 0750–AF90

### Defense Federal Acquisition Regulation Supplement; Limitations on DoD Non-Commercial Time-and-Materials Contracts DFARS Case 2007–D021

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address review and documentation requirements pertaining to the use of time-and-materials contracts for the acquisition of non-commercial services. The rule provides for the same level of review for both commercial and non-commercial DoD time-and-materials contracts.

**DATES:** *Effective Date:* November 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Sawyer, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–8384; facsimile 703–602–7887. Please cite DFARS Case 2007–D021.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 16.601(d) of the Federal Acquisition Regulation (FAR) requires that, before using a time-and-materials contract, the contracting officer must prepare a determination and findings that no other contract type is suitable. For time-and-materials contracts for commercial services, FAR 12.207(b)(2) specifies the minimum content for the determination and findings, and FAR 12.207(c) contains additional

requirements with regard to the use of indefinite-delivery contracts priced on a time-and-materials basis.

To provide for the same level of oversight in the award of all DoD time-and-materials contracts, this rule amends DFARS 216.601 to establish determination and findings requirements for DoD non-commercial time-and-materials contracts, similar to those required by FAR 12.207 for commercial services contracts.

DoD published a proposed rule at 73 FR 21891 on April 23, 2008. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 relates to internal DoD review and documentation requirements with regard to the selection of contract type.

##### 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 216

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 216 is amended as follows:

## PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR Part 216 continues to read as follows:

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

■ 2. Section 216.601 is amended by adding paragraph (d) to read as follows:

### 216.601 Time-and-materials contracts.

(d) *Limitations.*

(i) The determination and findings shall contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings shall—

(A) Include a description of the market research conducted;

(B) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;

(C) Establish that the requirement has been structured to minimize the use of time-and-materials requirements (e.g., limiting the value or length of the time-and-materials portion of the contract or order; establishing fixed prices for portions of the requirement); and

(D) Describe the actions planned to minimize the use of time-and-materials contracts on future acquisitions for the same requirements.

(ii) For indefinite-delivery contracts, the contracting officer shall—

(A) Structure contracts that authorize time-and-materials orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis, to the maximum extent practicable; and

(B) Execute the determination and findings for—

(1) Each order placed on a time-and-materials basis if the indefinite-delivery contract also authorizes orders on a cost-reimbursement, incentive, or fixed-price basis; or

(2) The basic contract if the indefinite-delivery contract only authorizes time-and-materials orders. The determination and findings shall—

(i) Contain sufficient facts and rationale to justify why orders on a cost-reimbursement, incentive, and fixed-price basis are not practicable; and

(ii) Be approved one level above the contracting officer.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

RIN 0750-AG08

#### Defense Federal Acquisition Regulation Supplement; Least Developed Countries That Are Designated Countries DFARS Case 2008-D019

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement

(DFARS) to update the list of “least developed” countries that are designated as eligible countries under the Trade Agreements Act, in accordance with direction from the United States Trade Representative.

**DATES:** *Effective Date:* November 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0328; facsimile 703-602-7887. Please cite DFARS Case 2008-D019.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The United States Trade Representative has revised the list of “least developed” countries that are designated as eligible countries under the Trade Agreements Act (19 U.S.C. 2501, *et seq.*), to add Liberia and to remove Cape Verde. This final rule makes corresponding changes to the list of designated countries in the clauses at DFARS 252.225-7021, Trade Agreements, and 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements.

This rule was not subject to Office of Management and Budget review under 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 under 41 U.S.C. 418b 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 2008-D019.

##### 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 252

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 252 is amended as follows:

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

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

#### 252.212-7001 [Amended]

■ 2. Section 252.212-7001 is amended as follows:

■ a. By revising the clause date to read “(NOV 2008)”;

■ b. In paragraph (b)(9) by removing “(MAR 2007)” and adding in its place “(NOV 2008)”.

■ 3. Section 252.225-7021 is amended by revising the clause date and paragraph (a)(3)(iii) to read as follows:

#### 252.225-7021 Trade Agreements.

\* \* \* \* \*

#### TRADE AGREEMENTS (NOV 2008)

(a) \* \* \*

(3) \* \* \*

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

\* \* \* \* \*

■ 4. Section 252.225-7045 is amended as follows:

■ a. By revising the clause date; and

■ b. In paragraph (a), in the definition of “Designated country”, by revising paragraph (3) to read as follows:

#### 252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.

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#### BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (NOV 2008)

(a) \* \* \*

*Designated country means—*

\* \* \* \* \*

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and