equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, or equipment items used for general testing purposes, or property that with relatively minor expense can be made suitable for general purpose use.

Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items, including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

Unique item identifier (UII) means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes, in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD recognized unique identification equivalent.

Virtual UII means the UII data elements assigned to an item that is not marked with a DoD compliant 2D data matrix symbol, e.g., enterprise identifier, part number, and serial number; or the enterprise identifier along with the Contractor's property internal identification, *i.e.*, tag number.

(b) *Requirement for item unique identification of Government-furnished equipment.* Except as provided in paragraph (c) of this clause—

(1) Contractor accountability and management of Government-furnished equipment shall be performed at the item level; and

(2) Unless provided by the Government, the Contractor shall establish a virtual UII or a DoD recognized unique identification for items that are—

(i) Valued at $5,000 or more in unit acquisition cost; or

(ii) Valued at less than $5,000 in unit acquisition cost and are serially managed, mission essential, sensitive, or controlled inventory, as identified in accordance with the terms and conditions of the contract.

(c) *Exceptions.* Paragraph (b) of this clause does not apply to—

(1) Government-furnished material;

(2) Reparables;

(3) Contractor-acquired property;

(4) Property under any statutory leasing authority;

(5) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(6) Intellectual property or software; or

(7) Real property.

(d) *Procedures for establishing UIIs.* To permit reporting of virtual UIIs to the DoD IUID Registry, the Contractor's property management system shall enable the following data elements in addition to those required by paragraph (f)(1)(iii) of the Government Property clause of this contract (FAR 52.245–1):

(1) Parent UII.

(2) Concatenated UII.

(3) Received/Sent (shipped) date.

(4) Status code.

(5) Current part number (if different from the original part number.

(6) Current part number effective date.

(7) Category code (''E'' for equipment).

(8) Contract number.

(9) Commercial and Government Entity (CAGE) code.

(10) Mark record.

(i) Bagged or tagged code (for items too small to individually tag or mark).

(ii) Contents (the type of information recorded on the item, e.g., item internal control number).

(iii) Effective date (date the mark is applied).

(iv) Added or removed code/flag.

(v) Marker code (designates which code is used in the marker identifier, e.g., D=CAGE, UN=DUNS, LD=DODAAC).

(vi) Marker identifier, e.g., Contractor's CAGE code or DUNS number).

(vii) Medium code; how the data is recorded, e.g., barcode, contact memory button.

(viii) Value, e.g., actual text or data string that is recorded in its human readable form.

(ix) Set (used to group marks when multiple sets exist); for the purpose of this clause, this defaults to ''one (1)''.

(e) *Procedures for updating the DoD IUID Registry.* The Contractor shall update the DoD IUID Registry at *https://www.bpn.gov/iuid* for changes in status, mark, custody, or disposition of items—

(1) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor;

(2) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Government property administrator, including reasonable inventory adjustments;

(3) Disposed of; or

(4) Transferred to a follow-on or other contract.

(End of clause)

[FR Doc. E8–27779 Filed 11–21–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 215, 247, and 252

RIN 0750–AF75

Defense Federal Acquisition Regulation Supplement; Carriage Vessel Overhaul, Repair, and Maintenance (DFARS Case 2007–D001)

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 1017 of the National Defense Authorization Act for Fiscal Year 2007. Section 1017 requires DoD to establish an evaluation criterion, for use in obtaining carriage of cargo by vessel, that considers the extent to which an offeror has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

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

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0302; facsimile 703–602–7887. Please cite DFARS Case 2007–D001.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 72 FR 49204 on August 28, 2007, to implement Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 1017 requires DoD to issue an acquisition policy that establishes, as a criterion required to be considered in obtaining carriage of cargo by vessel for DoD, the extent to which an offeror of such carriage has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

Nine sources submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* Some respondents took exception to the rule's use of the term ''evaluation factor or subfactor'' with regard to consideration of the amount of work an offeror has performed in U.S. shipyards. The respondents suggested

this evaluation criterion should be established as a significant factor in evaluation of offers.

DoD Response: The text at DFARS 247.573–2(c) has been revised to replace the term ''evaluation factor or subfactor'' with ''evaluation criterion,'' consistent with the language in Section 1017(a) of Public Law 109–364. The decision as to the relative value of the evaluation criterion is appropriately the responsibility of the source selection authority.

2. *Comment:* Some respondents expressed concern that the rule does not specifically state that the term ''covered vessels'' includes all covered vessels in an offeror's fleet. Other respondents suggested a more strict definition of ''covered vessels,'' which would be applicable only to the vessels the offeror is proposing to use in the procurement under evaluation.

DoD Response: The definition of ''covered vessel'' in the provision at 252.247–7026 is consistent with Section 1017(b) of Public Law 109–364. DoD interprets this definition to include all covered vessels in an offeror's fleet, and not just those offered under a specific solicitation. The text at DFARS 247.573–2(c)(3) has been amended to clarify this point.

3. *Comment:* One respondent recommended that the rule clarify that the evaluation preference would apply only in the case where DoD is soliciting offers for vessel carriage of its cargo in the coastwise or noncontiguous trade, not in other trades. Further, the respondent recommended that rule define the term ''coastwise or noncontiguous trade.'' The respondent suggested that this would mean referring to a voyage that meets the tests of: former Section 27 of the Merchant Marine Act, 1920; former 46 U.S.C. 12166; and former Section 2 of the Shipping Act, 1916. Therefore, the preference would not apply to carriage of cargo to a point that can be served by a vessel that has a registry endorsement such as Guam, which is considered part of the non-contiguous trade but is not a Jones Act trade.

DoD Response: The final rule clarifies that the evaluation preference applies only to solicitations requiring a covered vessel. Further, DoD agrees that the preference would not apply to carriage of cargo to a point that can be served by a vessel that has a registry endorsement, such as Guam. Vessels with a registry endorsement provided for under Section 12111 (formerly Section 12105) of Title 46 of the United States Code are not covered vessels. The final rule does not include a definition of ''coastwise or noncontiguous trade,'' as this term is already covered under Section 27 of the Merchant Marine Act, which is referenced in the definition of ''covered vessel'' in the provision at 252.247–7026.

4. *Comment:* One respondent suggested revising the statutory references in the definition of ''covered vessel'' to reflect the recodification of Title 46 of the United States Code on October 6, 2006.

DoD Response: DoD has revised the definition of ''covered vessel'' to reflect the current statutory references.

5. *Comment:* Some respondents stated that the 15-day work period within the definition of ''overhaul, repair, and maintenance work'' at 252.247–7026 was too long, while another respondent opposed any shortening of this time period.

DoD Response: DoD intended the definition to represent meaningful work, such as annual, regulatory, and scheduled overhaul, repair, and maintenance. Based on comments received regarding the length of time required for typical repairs, DoD has revised the time period for work categorized as ''overhaul, repair, and maintenance'' from 15 to 5 calendar days.

6. *Comment:* Some respondents recommended the definition of ''shipyard'' be changed to include ship repair facilities as well as ship building facilities. One respondent stated that the scope and nature of the overhaul, repair, and maintenance work, and not whether the work is performed in a shipyard that is capable of building a ship, should be considered in the evaluation criteria. Another respondent stated that, since the rule defines ''shipyard'' as a facility capable of building a ship, the size of ship a shipyard must be capable of building should be included within the definition.

DoD Response: DoD agrees that ''shipyard,'' as used within this DFARS rule, should be defined as a facility capable of performing overhaul, repair, and maintenance work, and the definition has been revised accordingly. Additionally, the definition of ''overhaul, repair, and maintenance work'' has been revised to remove the word ''pierside'' as a qualifier for the term ''shipyard.''

7. *Comment:* One respondent suggested adding a definition of ''foreign shipyard,'' to be defined as ''any shipyard that is not located in the United States.''

DoD Response: DoD has added definitions of ''U.S. shipyard'' and ''foreign shipyard,'' consistent with the definitions in Section 1017 of Public Law 109–364.

8. *Comment:* One respondent recommended that the rule be clarified such that the overhaul, repair, and maintenance reports required by the rule cover work performed at any shipyard, anywhere in the world.

DoD Response: The reporting requirement at DFARS 252.247–7026(c) has been revised to address work performed both in U.S. and foreign shipyards.

9. *Comment:* Some respondents suggested that the evaluation criterion be qualified such that certain foreign shipyard repairs would not receive adverse consideration under specific situations. One respondent suggested that repairs in foreign shipyards, due to accident, emergency, Act of God, or an infirmity to the vessel, should not receive adverse consideration in the evaluation criterion regarding the amount of work performed in U.S. shipyards, if it is determined that safety considerations warranted taking the vessel to the nearest shipyard. Two respondents suggested that foreign shipyard repairs should not receive adverse consideration due to non-availability of U.S. shipyards if an offeror can demonstrate that it contacted U.S. shipyards seeking a berth for a repair and was told that space was not available on a timely basis. One respondent suggested that the criterion should specifically recognize that U.S. vessels that do not call at a U.S. port for two years or more should not be adversely affected by the failure to have routine shipyard work performed at U.S. shipyards.

DoD Response: DoD recognizes that overhaul, repair, and maintenance work required due to an emergency situation or direction from the U.S. Government should not adversely affect an evaluation. Therefore, the final rule excludes repairs of this type from the evaluation criterion. All other foreign overhaul, repair, and maintenance work will be considered under the evaluation criterion, consistent with the statutory intent of maintaining the national defense industrial base.

10. *Comment:* One respondent suggested that a case could be made that facilities covered by NAFTA are effectively less foreign than facilities not covered by NAFTA.

DoD Response: The statute makes no provisions for evaluation consideration for overhaul, repair, and maintenance work performed at facilities covered by NAFTA.

11. *Comment:* Two respondents opposed the time period for reporting overhaul, repair, and maintenance work (current calendar year and four previous

calendar years), while one respondent stated support for this time period.

DoD Response: The time period in the rule is considered appropriate, as it captures a complete maintenance and repair cycle for Coast Guard inspected ships.

12. *Comment:* Two respondents suggested the evaluation criterion should consider not only overhaul, repair, and maintenance work, but also new construction.

DoD Response: The statute makes no provisions for new construction. The Jones Act provides an incentive for new construction in U.S. shipyards. In addition, the redefinition of ''shipyard'' as ''a facility capable of performing overhaul, repair, and maintenance work on covered vessels'' in the final rule broadens the scope of shipyard repair facilities.

13. *Comment:* One respondent stated that the rule does not extend far enough to offer true support and reward for carriers that have environmentally sound practices and provisions of efficient services.

DoD Response: The scope of this rule is limited to implementation of Section 1017 of Public Law 109–364.

14. *Comment:* One respondent suggested a broader definition of ''ship'' that would include non-self-propelled vessels.

DoD Response: The rule refers to ''covered vessels'' rather than ''ship''. The rule's definition of ''covered vessel'' is consistent with Section 1017(b) of Public Law 109–364.

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 has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to maintain a strong national ship repair industrial base. Therefore, the rule provides an evaluation preference for use in DoD solicitations for carriage of cargo by vessel, to apply to those entities that use domestic shipyards for vessel overhaul, repair, and maintenance. The rule is expected to have a positive effect on entities owning domestic shipyards, by encouraging the use of those shipyards. DoD will use the information required by the solicitation provision to evaluate offers and to prepare annual reports to Congress, as required by Section 1017 of Public Law 109–364.

C. Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements of this rule under Control Number 0704–0445.

List of Subjects in 48 CFR Parts 212, 215, 247, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR Parts 212, 215, 247, and 252, which was published at 72 FR 49204 on August 28, 2007, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR Parts 212, 215, 247, and 252 continues to read as follows:

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

PART 247—TRANSPORTATION

■ 2. Section 247.570 is amended by revising paragraph (a)(2) to read as follows:

247.570 Scope.

* * * * *

(a) * * *

(2) Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), which requires consideration, in solicitations requiring a covered vessel, of the extent to which offerors have had overhaul, repair, and maintenance work performed in shipyards located in the United States or Guam;

* * * * *

■ 3. Section 247.571 is revised to read as follows:

247.571 Definitions.

Covered vessel, foreign shipyard, overhaul, repair, and maintenance work, and *shipyard*, as used in this subpart, have the meaning given in the provision at 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.

■ 4. Section 247.572 is amended by revising paragraph (d)(1) to read as follows:

247.572 Policy.

* * * * *

(d) * * *

(1) When obtaining carriage requiring a covered vessel, the contracting officer must consider the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam; and

* * * * *

■ 5. Section 247.573–2 is amended as follows:

■ a. By revising paragraphs (c)(2) and (3); and

■ b. In paragraph (d)(3)(i) introductory text and paragraph (d)(3)(i)(C), by removing ''247.573–1(d)'' and adding in its place ''247.573–1(c)''. The revised text reads as follows:

247.573–2 Direct purchase of ocean transportation services.

* * * * *

(c) * * *

(2) An evaluation criterion for offeror participation in the Voluntary Intermodal Sealift Agreement; and

(3) An evaluation criterion considering the extent to which offerors have had overhaul, repair, and maintenance work for all covered vessels in an offeror's fleet performed in shipyards located in the United States or Guam. Work performed in foreign shipyards shall not be evaluated under this criterion if—

(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.

* * * * *

■ 6. Section 247.573–3 is amended by revising paragraphs (a)(1) and (b) to read as follows:

247.573–3 Annual reporting requirement.

(a) * * *

(1) Prepare a report containing all information received from all offerors in response to the provision at 252.247–7026 during the previous calendar year; and

* * * * *

(b) The Director of Acquisition, U.S. Transportation Command, will submit a consolidated annual report to the congressional defense committees, by June 1st of each year, in accordance with Section 1017 of Public Law 109–364.

■ 7. Section 247.574 is amended by revising paragraph (e) to read as follows:

247.574 Solicitation provisions and contract clauses.

* * * * *

(e) Use the provision at 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, 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.

* * * * *

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.

* * * * *

[FR Doc. E8–27782 Filed 11–21–08; 8:45 am]

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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;