

- a. In paragraph (b)(1), removing “September 11, 2001” and adding, in its place, “November 1, 1990”.
- b. Removing paragraph (g).

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 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 an Internet address and a cross-reference.

DATES: *Effective Date:* May 13, 2008.

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:

- 204.7005. Updates the Internet address for DoD order code assignments.
- 252.211-7003. Updates a cross-reference.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

- Therefore, 48 CFR parts 204 and 252 are amended as follows:
- 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

- 2. Section 204.7005 is amended by revising paragraph (d) to read as follows:

204.7005 Assignment of order codes.
* * * * *

(d) Order code assignments can be found at http://www.acq.osd.mil/dpap/dars/order_code_assignments.html.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211-7003 [AMENDED]

- 3. Section 252.211-7003 is amended in Alternate I, in the introductory text, by removing “211.274-4(c)” and adding in its place “211.274-5(a)(4)”.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 231, and 252

RIN 0750-AF67

Defense Federal Acquisition Regulation Supplement; Excessive Pass-Through Charges (DFARS Case 2006-D057)

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 Section 852 of the National Defense Authorization Act for Fiscal Year 2007. Section 852 requires DoD to prescribe regulations to ensure that pass-through charges on contracts or subcontracts that are entered into for or on behalf of DoD are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor.

DATES: *Effective date:* May 13, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before July 14, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006-D057, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2006-D057 in the subject line of the message.
- Fax: 703-602-7887.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Sandra Morris, OUSD (AT&L) DPAP (CPF), 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. Sandra Morris, 703-602-0296.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 72 FR 20758 on April 26, 2007, to implement Section 852 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 852 requires DoD to prescribe regulations to ensure that pass-through charges on contracts or subcontracts (or task or delivery orders) that are entered into for or on behalf of DoD are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. To enable DoD to ensure that pass-through charges are not excessive, the interim rule included a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted and, when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit and value added with regard to the subcontract work.

General Response to Comments:

Fourteen sources submitted comments on the interim rule. In general, the public comments expressed concern that the rule discourages use of subcontractors and will lead to inappropriate application or adjustment of indirect costs. The comments also expressed concern that the contract is always open to oversight and opinions on excessive pass-through charges.

DoD points out that the statute requires that DoD not pay excessive pass-through charges, and DoD believes that the rule represents appropriate implementation of the statute. The rule is intended to protect the Government from those situations where there appears to be an agreement with a contractor to perform the contract scope of work, including “managing” subcontractors, then after award, the contractor subcontracts substantially all the effort without providing the required value-added subcontract management functions that were expected. There is no intent in this rule to disrupt the subcontracting process or other arrangements for firms that furnish supplies and services.