

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 pertains to administrative procedures for contract closeout functions performed by the Government.

### 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 204 and 244

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 204 and 244 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 244 continues to read as follows:

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

### PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.804 is revised to read as follows:

#### 204.804 Closeout of contract files.

Contracting officers shall close out contracts in accordance with the procedures at PGI 204.804. The closeout date for file purposes shall be determined and documented by the procuring contracting officer.

#### 204.804–1 and 204.804–2 [Removed]

■ 3. Sections 204.804–1 and 204.804–2 are removed.

### PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 4. Section 244.304 is amended in paragraph (b) by revising the second sentence to read as follows:

#### 244.304 Surveillance.

(b) \* \* \* See PGI 244.304(b) for guidance on how weaknesses may arise and may be discovered.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 207 and 212

RIN 0750–AF78

### Defense Federal Acquisition Regulation Supplement; Commercial Item Determinations (DFARS Case 2007–D005)

**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 requirements for DoD contracting officers to ensure that an item meets the definition of “commercial item” specified in the Federal Acquisition Regulation (FAR), when using commercial item procedures for acquisitions exceeding \$1 million in value.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–1302; facsimile 703–602–7887. Please cite DFARS Case 2007–D005.

#### SUPPLEMENTARY INFORMATION:

#### A. Background

FAR Part 12, Acquisition of Commercial Items, applies to the acquisition of supplies or services that meet the definition of “commercial item” in FAR 2.101. To emphasize the applicability of FAR Part 12, this DFARS rule specifies that, when using FAR Part 12 procedures for acquisitions exceeding \$1 million in value, the contracting officer must determine in writing that the acquisition meets the commercial item definition in FAR 2.101, and the contracting officer must include the written determination in the contract file.

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 2007–D005.

### 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 and 212

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 207 and 212 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207 and 212 continues to read as follows:

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

### PART 207—ACQUISITION PLANNING

■ 2. Section 207.102 is added to read as follows:

#### 207.102 Policy.

(a)(1) See 212.102 regarding requirements for a written determination that the commercial item definition has been met when using FAR Part 12 procedures.

### PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Subpart 212.1 is added to read as follows:

#### Subpart 212.1—Acquisition of Commercial Items—General

#### 212.102 Applicability.

(a)(i) When using FAR Part 12 procedures for acquisitions exceeding \$1 million in value, the contracting officer shall—

(A) Determine in writing that the acquisition meets the commercial item definition in FAR 2.101; and

(B) Include the written determination in the contract file.

(ii) Follow the procedures at PGI 212.102(a) regarding file documentation.  
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