

Submission of Federal Rules Under the Congressional Review Act

JUN 9 3 2004
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President of the Senate

Speaker of the House of Representatives

GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency

Department of Defense

2. Subdivision or Office

OUSD(AT&L)DPAP(DAR)

3. Rule Title

Use of FAR Part 12 for Performance-Based Contracting for Services

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable)
DFARS Case 2003-D111

5. Major Rule Non-major Rule

6. Final Rule Other

7. With respect to this rule, did your agency solicit public comments? Yes No N/A

8. Priority of Regulation (fill in one)

Economically Significant; or
Significant; or
Substantive, Nonsignificant

Routine and Frequent or
Informational/Administrative/Other
(Do not complete the other side of this form
if filled in above.)

9. Effective Date (if applicable) June 25, 2004 (estimated)

10. Concise Summary of Rule (fill in one or both) attached stated in rule

Submitted by:  (signature)

JUN 16 2004

Name: Deidre A. Lee

Title: Director, Defense Procurement and Acquisition Policy

For Congressional Use Only:

Date Received: _____

Committee of Jurisdiction: _____

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	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F. Did you discuss any of the following in the preamble to this rule?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
● E.O. 12612, Federalism	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
● E.O. 12875, Enhancing the Intergovernmental Partnership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			

(Billing Code 5001-08-P)

DEPARTMENT OF DEFENSE

48 CFR Parts 212 and 237

[DFARS Case 2003-D111]

Defense Federal Acquisition Regulation Supplement;

Use of FAR Part 12 for Performance-Based Contracting for Services

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete text pertaining to the use of FAR Part 12 (Acquisition of Commercial Items) procedures for performance-based contracting for services. The statutory authority upon which this text was based has expired.

EFFECTIVE DATE: [Date of publication in Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D111.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes DFARS 212.102 and 237.601, which implemented Section 821 of the National Defense Authorization Act

for Fiscal Year 2001 (Public Law 106-398). Section 821 permitted DoD to treat certain performance-based service contracts and task orders as contracts for the procurement of commercial items. The authority provided by Section 821 expired on October 30, 2003, and has been superseded by the authority provided in Section 1431 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 1431 provides broader, Governmentwide authority for the treatment of performance-based service contracts and task orders as contracts for the procurement of commercial items. An interim FAR rule implementing Section 1431 was published in Federal Acquisition Circular 2001-24 on June 18, 2004.

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 effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Therefore, publication for public comment 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 2003-D111.

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 212 and 237

Government procurement.

Michele P. Peterson,

Executive Editor,

Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212 and 237 are amended as follows:

1. The authority citation for 48 CFR Parts 212 and 237 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

Subpart 212.1 [Removed]

2. Subpart 212.1 is removed.

PART 237—SERVICE CONTRACTING

Subpart 237.6 [Removed]

3. Subpart 237.6 is removed.