

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 242

Defense Federal Acquisition Regulation Supplement; Contractor Insurance/Pension Review (DFARS Case 2009-D025)

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

ACTION: Proposed rule with request for comments.

SUMMARY: DoD proposes to remove and relocate the requirements for conducting a Contractor Insurance/Pension Review from Procedures, Guidance, and Information to the Defense Acquisition Regulation Supplement.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 10, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009-D025, 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 2009-D025 in the subject line of the message.

Fax: 703-602-0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703-602-0311.

SUPPLEMENTARY INFORMATION:

A. Background

As part of a DFARS Transformation effort, Defense Acquisition Regulation Supplement (DFARS) Case 2003-D050, published at 71 FR 9273, February 23, 2006, moved requirements for Contractor Insurance/Pension Review (CIPR) from DFARS 242.7302 to Procedures, Guidance, and Information

(PGI) 242.7302. This DFARS case proposes to move requirements for CIPR back to the DFARS from the PGI. The threshold and requirements for conducting a CIPR are DoD-wide policy that has a significant effect beyond the internal operating procedures of DoD. Since conduct of a CIPR impacts industry, as contractors are required to provide documentation to support the reviews, the requirements for CIPR should be located in the DFARS.

B. Regulatory Flexibility Act

DoD does not expect this proposed rule to 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.* The proposed rule merely relocates the requirements for CIPR from the PGI to the DFARS. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009-D025) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies because information collection requirements in the proposed rule at DFARS subpart 242.73 are currently approved under Office of Management and Budget Control Number 0704-0250. Relocating the requirement has no impact on the information collection requirement.

List of Subjects in 48 CFR Part 242

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 242 as follows:

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for 48 CFR part 242 continues to read as follows:

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

2. Revise section 242.7302 to read as follows:

242.7302 Requirements.

(a)(1) An in-depth CIPR as described at DFARS 242.7301(a)(1) shall be conducted only when—

(i) A contractor has \$50 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(ii) The ACO, with advice from DCMA insurance/pension specialists and DCAA auditors, determines a CIPR is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(2) Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR that concentrates on specific areas of a contractor's insurance programs, pension plans, or other deferred compensation plans shall be performed for a contractor (including, but not limited to, a contractor meeting the requirements in paragraph (a) of this section) when any of the following circumstances exists, but only if the circumstance(s) may result in a material impact on Government contract costs:

(1) Information reveals a deficiency in the contractor's insurance/pension program.

(2) The contractor proposes or implements changes in its insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) The Government needs to follow up on contractor implementation of prior CIPR recommendations.

(c) The DCAA auditor shall use relevant findings and recommendations of previously performed CIPRs in determining the scope of any audits of insurance and pension costs.

(d) When a Government organization believes that a review of the contractor's insurance/pension program should be performed, that organization should provide a recommendation for a review to the ACO. If the ACO concurs, the review should be performed as part of an ACO-initiated special CIPR or as part of a CIPR already scheduled for the near future.

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