



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 231

[Docket DARS-2017-0013]

RIN 0750-AJ51

**Defense Federal Acquisition Regulation Supplement: Repeal of
Independent Research and Development Technical Interchange
(DFARS Case 2017-D041)**

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a requirement for major contractors to have a technical interchange with the Government prior to generating independent research and development costs.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove the text at DFARS 231.205-18(c)(iii)(C)(4), which requires major contractors to engage in and document a technical interchange with the Government, prior to generating independent research and development (IR&D) costs for IR&D projects initiated in fiscal year 2017 and later, in order for those costs to be determined allowable.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the Federal Register at 82 FR 35741 on August 1, 2017. No public comments were received on this DFARS requirement in response to the notice. Subsequently, the DoD Task Force reviewed the requirements of DFARS 231.205-18(c)(iii)(C)(4) and determined that the DFARS coverage was outmoded and recommended removal, since requiring a technical interchange between the Government and major contractors is

unnecessary. The objective of the interchange can be met through other means.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes an unneeded requirement in the DFARS that required a technical interchange between the Government and certain contractors. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

III. Expected Cost Savings

Effective November 4, 2016, DFARS 231.205-18(c)(iii)(C)(4) was revised to require contractors to engage in a technical interchange with the Government, prior to the generation of IR&D costs for IR&D projects initiated in fiscal year 2017 and later, in order for those costs to be allowable. This requirement causes the contractor to expend time preparing for a discussion, contacting appropriate Government personnel, and discussing the IR&D project. Since contractors commonly pool all of their IR&D project costs to develop a single billing rate, this requirement would necessitate contractors having to discuss all of the IR&D projects contained in their billing rate. While some

contractors may have a single project, many have close to 100 or more, which could be significantly burdensome.

This requirement applies to major contractors seeking to include IR&D costs as part of their reimbursable costs under a contract. Major contractors are defined as those whose covered segments allocated a total of more than \$11 million in IR&D and bid and proposal costs to covered contracts during the preceding fiscal year; therefore, small entities are not expected to meet the definition of a major contractor or to be impacted. IR&D costs are most commonly included in noncommercial, cost-type contracts that are subject to certified cost and pricing data and cost accounting standards. This rule removes the requirement for major contractors to have a technical interchange with the Government prior to generating IR&D costs. Removal of this requirement will result in freeing contractors to pursue IR&D projects without including the Government in those preliminary decisions.

DoD has performed a regulatory cost analysis on this rule. The following is a summary of the estimated public annualized cost savings, calculated in 2016 dollars at a 7-percent discount rate in perpetuity:

Annualized 7%	-\$1.7 million
Present Value 7%	-\$24.0 million

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at www.regulations.gov, search for "DFARS Case 2017-D041," click "Open Docket," and view "Supporting Documents."

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is considered to be an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, deregulatory action. Details on the estimated cost savings can be found in section III. of this preamble.

VI. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is the Office of Federal Procurement Policy statute (codified at Title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely removes an obsolete requirement from the DFARS.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section V of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0483, entitled "Independent Research and Development Technical Descriptions." Repeal of this rule does not impact the IR&D reporting that continues to be required annually, when the IR&D project is completed, under OMB Control Number 0704-0483.

List of Subjects in 48 CFR Part 231

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 231 is amended as follows:

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for part 231 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 chapter 1.

231.205-18 [Amended]

2. Amend section 231.205-18 by:

a. Adding "and" to the end of paragraph (c) (iii) (C) (2);

b. Removing “; and” from the end of paragraph (c) (iii) (C) (3) and adding a period in its place; and

c. Removing paragraph (c) (iii) (C) (4).

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