



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 231

[Docket DARS-2015-0070]

RIN 0750-AI81

Defense Federal Acquisition Regulation Supplement: Enhancing the Effectiveness of Independent Research and Development (DFARS Case 2016-D002)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to improve the effectiveness of independent research and development investments by the defense industrial base that are reimbursed as allowable costs.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2016-D002, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit

comments via the Federal eRulemaking portal by entering "DFARS Case 2016-D002" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2016-D002." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2016-D002" on your attached document.

- o E-mail: osd.dfars@mail.mil. Include DFARS Case 2016-D002 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, telephone 571-372-6099.

SUPPLEMENTARY INFORMATION:

I. Background

Better Buying Power (BBP) is the implementation of best practices to strengthen DoD's buying power, improve industry productivity, and provide an affordable, value-added military capability to the warfighter (see <http://bbp.dau.mil/>). Launched in 2010, BBP encompasses a set of fundamental acquisition principles to achieve greater efficiencies through affordability, cost control, elimination of unproductive processes and bureaucracy, and promotion of competition. BBP initiatives also incentivize productivity and innovation in industry and Government, and improve tradecraft in the acquisition of services.

The Independent Research and Development (IR&D) initiative outlined in BBP 3.0 is intended to improve the effectiveness of IR&D investments by the defense industrial base that are reimbursed as allowable costs. As stated in the Under Secretary of Defense for Acquisition, Technology, and Logistics BBP 3.0 Implementation Memorandum, dated April 9, 2015 (see <http://bbp.dau.mil/references.html>), IR&D investments need to meet the complementary goals of providing defense companies an opportunity to exercise independent judgement on investments in promising technologies that will provide a competitive advantage, including the creation of intellectual property, while at the same time pursuing technologies that may improve the military capability of the United States. To achieve this

goal, both DoD and the industrial base need to work together to ensure that DoD has visibility into the opportunity created by Government-reimbursed IR&D efforts performed by defense contractors.

In accordance with 10 U.S.C. 2372(f), contractor IR&D investments are not directed by the Government - they are identified by individual companies and are intended to advance a particular company's ability to develop and deliver superior and more competitive products to the warfighter. However, these efforts can have the best payoff, both for DoD and for individual performing companies, when the Government is well informed of the investments that companies are making, and when companies are well informed about related investments being made elsewhere in the Government's research and development portfolios and about Government plans for potential future acquisitions where this IR&D may be relevant.

II. Discussion and Analysis

DoD is proposing to revise DFARS 231.205-18, Independent Research and Development and Bid and Proposal Costs, to require that proposed new IR&D efforts be communicated to appropriate DoD personnel prior to the initiation of these investments, and that results from these investments should also be shared with appropriate DoD personnel. The intent of such engagement is not to reduce the independence of IR&D investment selection, nor to

establish a bureaucratic requirement for Government approval prior to initiating an IR&D project. Instead, the objective of this engagement is to ensure that both IR&D performers and their potential DoD customers have sufficient awareness of each other's efforts and to provide industry with some feedback on the relevance of proposed and completed IR&D work.

III. 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 a significant regulatory action and, therefore, was 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.

IV. 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. However, an initial regulatory flexibility analysis has been prepared and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to improve the effectiveness of independent research and development (IR&D) investments by the defense industrial base that are reimbursed as allowable costs in accordance with Federal Acquisition Regulation 31.205-18(c). The IR&D initiative outlined in Better Buying Power 3.0 is intended to improve the effectiveness of IR&D investments by the defense industrial base that are reimbursed as allowable costs. To achieve this goal, both DoD and the industrial base need to work together to ensure the Department has visibility into the opportunity created by Government-reimbursed IR&D efforts performed by defense contractors. The rule proposes to revise DFARS 231.205-18, Independent Research and Development and Bid and Proposal Costs, to require that proposed new IR&D efforts be communicated to appropriate DoD personnel prior to the initiation of these investments, and that results from these investments should also be shared with appropriate DoD personnel.

At this time DoD is unable to estimate the number of small entities to which this rule will apply. However, DoD does not expect the rule to have a significant economic impact on a substantial number of small entities, because DFARS 231.205-

18(c)(iii) applies only to major contractors, which are defined as those whose covered segments allocated a total of more than \$11,000,000 in independent research and development and bid and proposal costs to covered contracts during the preceding fiscal year.

There is no change to reporting and recordkeeping as a result of this rule. The recordkeeping is limited to that required to properly record and report IR&D projects to the Defense Technical Information Center (DTIC) using DTIC's online IR&D database.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the requirements.

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 2016-D002), in correspondence.

V. Paperwork Reduction Act

The rule affects the information collection requirements at Defense Federal Acquisition Regulation Supplement (DFARS)

231.205-18, currently approved under the Office of Management and Budget (OMB) Control Number 0704-0483, entitled, "Independent Research and Development Technical Descriptions," in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35); however, the impact of this rule is negligible. Currently, contractors are required to (1) report Independent Research and Development (IR&D) projects to the Defense Technical Information Center (DTIC) using the DTIC's on-line IR&D database and (2) update these inputs at least annually and when the project is completed. This rule merely changes the web address for submission of this report and requires major contractors to include in the report the name of the Government employee with which a technical interchange was held prior to initiation of the IR&D effort and the date of such interchange.

List of Subjects in 48 CFR Parts 231

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 231 is proposed to be 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 CFR chapter 1.

2. In section 231.205-18, revise paragraph (c)(iii)(C) to read as follows:

231.205-18 Independent research and development and bid and proposal costs.

* * * * *

(c) * * *

(iii) * * *

(C) For annual IR&D costs to be allowable—

(1) The IR&D projects generating the costs must be reported to the Defense Technical Information Center (DTIC) using the DTIC's on-line input form and instructions at <http://www.defenseinnovationmarketplace.mil/>;

(2) The inputs must be updated with a summary of results at least annually and when the project is completed;

(3) Copies of the input and updates must be made available for review by the cognizant administrative contracting officer (ACO) and the cognizant Defense Contract Audit Agency auditor to support the allowability of the costs;

(4) Contractors that do not meet the threshold as a major contractor are encouraged to use the DTIC on-line input form to report IR&D projects to provide DoD with visibility into the technical content of the contractors' IR&D activities; and

(5) For IR&D projects initiated in the contractor's fiscal year 2017 and later, as a prerequisite for the subsequent determination of allowability, major contractors must—

(i) Engage in a technical interchange with a technical or operational DoD Government employee before IR&D costs are generated so that contractor plans and goals for IR&D projects benefit from the awareness of and feedback by a DoD employee who is informed of related ongoing and future potential interest opportunities; and

(ii) Use the online input form for IR&D projects reported to DTIC to document the technical interchange, which includes the name of the DoD Government employee and the date the technical interchange occurred.

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