DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

Contract Closeout; Systemic Issues

AGENCY: Defense Acquisition Regulations System, Department of Defense.

ACTION: Response to public comments.

SUMMARY: The Director of Defense Procurement and Acquisition Policy (DPAP) recently completed an assessment of public input on systemic issues related to contract closeout that were identified in a public meeting held on September 21, 2005. This assessment has resulted in recommendations for revisions to policy, guidance, and training related to contract closeout responsibilities.

FOR FURTHER INFORMATION CONTACT: Ms. Pat West, DPAP CPF Directorate, by telephone at (703) 602–8387, or by e-mail at *pat.west@osd.mil.*

SUPPLEMENTARY INFORMATION: In June 2005, the Department of Defense (DoD) formed a Contract Closeout Systemic Issues Team to develop recommendations for improving the contract closeout process. During June/July 2005, the Team engaged with respondents to DoD's September 24, 2002, **Federal Register** notice (67 FR 59799) requesting public input on how to improve the contract closeout process. On September 21, 2005, DoD held a public meeting to discuss potential opportunities to streamline the closeout process for DoD contracts (70 FR 46824, August 11, 2005). At the public meeting, interested parties provided input on 23 primary issue areas. The public meeting was attended by Government and industry representatives, and the issues discussed during the public meeting are published at *http://www.acq.osd.mil/dpap/general/cost-pricing.htm.*

DPAP has reviewed the public comments and plans to pursue recommended revisions to the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS) and its companion Procedures, Guidance, and Information (PGI), User Guides, and DoD training resources. DPAP plans to take the following actions to enhance the contract closeout process:

- Open a DFARS case on contract closeout to establish a comprehensive PGI section to address contract closeout and to assess whether regulatory clarification/revision is needed to address the following:
  - —Cumulative Allowable Cost Worksheets.
  - —Quick closeout.
  - —Subcontract closeout.
  - —Final indirect cost rate proposals.
  - —Periods of performance.
  - —Government property.
  - —Alternate contract closing methods.
  - —Contractor compliance with data submission requirements related to contract closeout.
- Identify and make available best practices used by the military departments and defense agencies in completing contract closeouts.
- Identify any additional training that should be provided on contract closeout.

The following is a discussion of the public comments/recommendations received and the DPAP response and/or planned

1. Final Vouchers

a. Waiver of Final Voucher Audits

Comment: The following recommendations were received relating to the waiver of final voucher audits:

(1) Provide the administrative contracting officer (ACO) waiver authority.

(2) Clearly identify the Government representative that has the authority to waive the audit (ACO versus procuring contracting officer (PCO)).

(3) Waive the audit for contracts less than a specified amount (e.g., $10 million).

(4) Provide specific risk assessment guidance to the ACO for use in determining whether a waiver of audit is appropriate.

(5) Include factors in addition to the dollar value in determining when final voucher audits should be waived, such as the size of the company, the number of contracts, and consideration of the contractor's corrective actions with respect to system inadequacies.

(6) Permit the Government and the contractor to agree to waive the final voucher audit when money owed is below a stipulated amount (e.g., less than $1,000).

(7) Require final voucher audits for cost-type contracts only on an exception basis for those contractors having billing systems that meet specified standards. Audits may be required when adverse circumstances exist, such as inadequate internal control systems, contracts exceeding a specified dollar threshold, recent frequency of audits, and previous audit exceptions.

(8) Allow for application of the audit waiver requirements at the delivery order level.

DPAP Response: In cases where final indirect cost rates have not been negotiated, FAR 42.708 provides for a quick closeout procedure when certain other criteria have been met. These criteria may warrant expansion based on particular facts and circumstances. Therefore, the DFARS case on contract closeout will include a review of whether it is appropriate to amend the FAR and/or DFARS to expand on the existing quick closeout FAR criteria. Depending on the results of this review, DPAP may consider revisions to the DFARS and/or may make recommendations to the FAR Council for revisions to the current FAR language on quick closeout.

In those cases where final indirect cost rates have been negotiated, DPAP does not believe a broad-based waiver of audits of final vouchers would facilitate the contract closeout process. Instead, DPAP believes that the contract closeout process is significantly reduced if contractors submit a Cumulative Allowable Cost Worksheet (CACWS) after the indirect cost rates are finalized. The CACWS allows the ACO to close out a contract without requesting an audit of the contractor's final voucher. Therefore, the DFARS case on contract closeout will include a review to determine if, and to what extent, the CACWS should be required and/or encouraged in the regulations. This review will also include an assessment of how the CACWS is or should be structured to best meet contract closeout needs without imposing significant administrative burden on the contractor or the Government.

b. Use of Bilateral Modifications

Comment: It was recommended that contracting officers be permitted to use a bilateral modification to close out a contract, rather than requiring a final voucher, when no money is owed to the Government and specific risk criteria are met.

DPAP Response: The DFARS case on contract closeout will include a review of the quick closeout criteria in the FAR. DPAP will also review the feasibility of permitting bilateral modifications, in lieu of final vouchers, when certain criteria are met. Depending on the results of this review, DPAP may consider revisions to the DFARS and/or may make recommendations to the FAR Council for revisions to the current FAR language.

c. Issuance of Demand Letters

Comment: It was recommended that a demand letter be issued if monies are owed the Government and a final voucher is not submitted within the required timeframes. Under the recommendation, this demand letter

would state that interest will be assessed as of a specified date, and would identify why payment is delayed and the reasons the contractor has not submitted a final voucher (e.g., extension of period of performance). Other respondents opined that issuance of a demand letter may further delay the process and may also trigger a Treasury Department offset. They also noted that it would be difficult, absent a final voucher, for the Government to determine whether or not monies are owed.

DPAP Response: FAR 42.705(b) and (c) permit the contracting officer to unilaterally close out a contract when the contractor fails to submit a final voucher. The DFARS case on contract closeout will consider if and when a demand letter should be issued for contractors that fail to submit final vouchers in accordance with FAR 42.705(b). The review also will consider how the Government could/would determine if monies are owed and will evaluate the impact of any potential delays in the contract closeout process that the use of a demand letter may create.

d. Prime Contract Closeout in Advance of Subcontract Closeout

Comment: A recommendation was made to permit closeout of a prime contract even though a subcontract or subcontracts under that prime contract have not been closed. It was further recommended that such a process include adequate notice to the subcontractor. Conversely, a concern was expressed that such a closeout of a prime contract may result in the prime contractor's unilateral closeout of subcontracts and elimination of the Government reimbursement of any additional subcontract costs, thereby inhibiting the subcontractor's negotiation with the prime contractor.

DPAP Response: The DFARS case on contract closeout will evaluate if/when it may be appropriate to permit prime contract closeout when one or more subcontracts have not been closed.

2. Final Invoices—Fixed-Price Contracts

a. Timing of Submission of a Final Invoice

Comment: Recommendations were made to require submittal of a final invoice within 60 days of Government acceptance, or to establish a one-year time limit for contractors to submit the final invoice, after which time the contracting officer can unilaterally close the contract without further payment to the contractor.

DPAP Response: DPAP believes that this issue is adequately addressed in FAR 4.804–1, which authorizes the contracting officer to close out fixed-price contracts within six months after the date on which the contracting officer receives evidence of physical completion. No evidence has been presented that indicates the six-month period is causing a significant delay in closing out contracts.

b. Clarification of Requirement to Submit Final Vouchers

Comment: A recommendation was made to clarify regulations regarding the need to submit a final invoice when a DD Form 250, Material Inspection and Receiving Report, is submitted. A second recommendation was made to provide an exception to the requirement for submission of a final voucher for contracts outside the continental United States (OCONUS).

DPAP Response: While Appendix F of the DFARS currently provides guidance on the use of DD Form 250, DPAP believes it may also be helpful to include guidance in the PGI section on contract closeout to address the relationship between the DD Form 250 and the final voucher. Therefore, the DFARS case on contract closeout will include an assessment of whether additional exceptions are needed for OCONUS contracts.

c. Waiver of the Requirement to Submit Final Vouchers

Comment: A recommendation was made to waive the requirement for submission of a final invoice if the amount due to the contractor is less than $1,000 and less than 10 percent of the contract value. In such cases, the respondent recommended that the contracting officer be permitted to unilaterally deobligate any remaining funds.

DPAP Response: DPAP does not believe it is advisable to preclude payment to a contractor when monies are due. DPAP also does not believe there is a legal basis for the Government to extinguish its debt solely on the basis of the dollar amount involved. Thus, submission of a final invoice in such cases is necessary to ensure that proper payments are made under the terms of each contract.

3. Final Indirect Cost Rates

a. Timely Submission of Final Indirect Cost Rate Proposals

Comment: The following recommendations were made to encourage timely submission of indirect cost rate proposals:

(1) Increase the withhold amount (a specified percentage and/or specified amount, e.g., 15 percent or $100,000). One respondent recommended analyzing major vs. non-major contractors to identify problems preventing timely submission before enacting such a withhold. Another respondent stated that increased withholdings will cause problems in obtaining additional monies due to cancelled funds.

(2) Provide incentives, rather than penalize contractors, for timely submission of indirect cost rate proposals.

(3) Include a contract provision that permits the contracting officer to extend the indirect cost rate proposal submission date.

DPAP Response: The DFARS case on contract closeout will include a review of the current provisions addressing the submission of final indirect cost rate proposals to ascertain whether any adjustments (positive and/or negative incentives) to the current regulatory coverage are warranted.

DPAP does not believe action is necessary regarding the proposal submission date, because FAR 52.216–7(d) currently authorizes the contracting officer to extend the submission due date if exceptional circumstances exist.

b. Contract Closeout Using Rates Other Than Established Final Indirect Cost Rates

Comment: Recommendations were made to allow contract closeout using indirect cost rates in the forward pricing rate agreement, provisional rates, or certified year-end rates rather than final indirect cost rates, when final indirect cost rates are not established on a timely basis. One respondent further noted that the use of any such rates should be by contractor and Government mutual agreement only. Another respondent noted that the contractor's past history of costs questioned should be considered in determining whether to use such rates.

DPAP Response: The DFARS case on contract closeout will review if/when the use of forward pricing, provisional, or certified year-end rates would be acceptable when final indirect cost rates are not available. The review will also address the issue of mutual agreement in using any such rates for contract closeout.

c. Content of Final Indirect Cost Rate Proposals

Comment: A number of recommendations were made regarding the required content of an adequate indirect cost rate proposal. These

recommendations included the following:

(1) Review the content requirements for indirect cost rate proposals to determine if/where they could be streamlined.

(2) Establish different content requirements based on dollar thresholds.

(3) Provide flexibility so that the proposal is not rejected when it is not exactly the same as the content requirements, particularly when there are only format issues/problems.

(4) Do not require submission of Cumulative Allowable Cost Worksheets at the time of submission of the indirect cost rate proposal (permit these worksheets to be submitted at a later date).

DPAP Response: The DFARS case on contract closeout will include a review of the current requirements regarding the content of an adequate indirect cost rate proposal to determine if/how they could be streamlined, and the extent to which additional flexibility should be provided. DPAP will evaluate the need for the addition of DFARS/PGI language regarding such content, as well as PGI references to relevant Defense Contract Audit Agency (DCAA), Defense Contract Management Agency (DCMA), and other agency materials on this subject. This review will also assess whether regulatory language is needed to address if/when Cumulative Allowable Cost Worksheets must be submitted to permit timely audit and negotiation of indirect cost rates and contract closeout.

d. Separate Proposals for Final Direct and Indirect Costs

Comment: One recommendation would permit the separate submission of final direct and indirect cost proposals when the ACO believes separate submissions would facilitate the contract closeout process.

DPAP Response: DPAP does not see the value in permitting separate proposals. DPAP believes that separate proposals would impose an administrative burden on both the Government and the contractor, since both proposals and multiple final vouchers would be required for the same contract (one for direct costs, one for indirect costs). When final indirect cost rates have not been negotiated, the use of quick closeout procedures is a more feasible solution than submission of separate direct and indirect cost proposals. In addition, DPAP believes it is inadvisable to permit the separate submission of direct and indirect costs, since both are required to determine indirect cost rates, and any reclassification of costs between direct and indirect would be made administratively more cumbersome by separate proposals.

e. Lump Sum Settlements

Comment: One recommendation called for providing lump sum settlement guidance to the contracting officer.

DPAP Response: DPAP does not see value in providing guidance on a lump sum settlement; nor does DPAP believe it is prudent to do so, since any such guidance will ultimately tie back to the actual incurred costs. A contracting officer must have a basis for determining the final amount due. The basis for this amount is the annual allowable incurred costs of the contractor and the final negotiated indirect cost rates.

4. Lack of Government Resources and/or Timely Action

a. Utilization of Government Resources

Comment: Various recommendations were made regarding the best utilization of Government resources in performing contract closeout functions. These recommendations included the following:

(1) Assign an individual or team at each agency to be responsible for reducing and eliminating the backlog of open contracts, provide training for individuals to effectively reduce the backlog, and provide promotion opportunities.

(2) Make the contract closeout function an integral part of contract administration rather than a separate function.

(3) Establish Government Centers of Excellence for contract reconciliations, establishment of final indirect cost rates, and expiring funds to assist in resolving contract closeout issues.

(4) Create a contract closeout contracting officer, similar to the termination contracting officer, who would be a specialist in closing out contracts.

(5) Outsource the contract closeout function to contractors.

DPAP Response: DPAP will review the current processes used by the military departments and defense agencies to identify best practices for utilizing resources in performing contract closeout. These best practices will be made available to the military departments and defense agencies for their consideration.

b. Line Item Within the DoD Budget for Contract Closeout

Comment: One respondent recommended establishing a separate line item in the DoD budget dedicated to contract closeout activities.

DPAP Response: DPAP does not believe it would be beneficial to establish a separate budget line item for contract closeout activities for the military departments and defense agencies. Its establishment would impose the significant administrative burden of capturing the individual activities associated with contract closeout in the DoD cost accounting systems, which are not designed to capture costs associated with discrete work activities across the Department. The intention of the separate line item would be to force the military departments and defense agencies to spend sufficient monies to support the closeout effort. However, it could be easily reduced or eliminated and, by itself, would provide no assurance that contract closeouts would be completed, since it most likely would not change the closeout process but would have the adverse effect of reducing flexibility. DPAP believes the key to successful utilization of resources is to provide a set of best practices to the departments and agencies, and to let the departments and agencies apply those practices in a manner that best meets their particular situations.

c. Timeline for DCAA Audits of Final Indirect Cost Rates

Comment: A recommendation was made to establish a timeline by which DCAA audits of indirect cost rate proposals should be completed. Under this recommendation, if the audit is not completed by the date specified, the contracting officer would have the authority to use a third party to conduct the audit, and the cost of the audit could be reimbursed to the contractor or paid directly by the Government to the third party auditor.

DPAP Response: DPAP believes that the key to timely audit of indirect cost rate proposals is the timely submission of an adequate final indirect cost rate proposal by the contractor. DoD has internal mechanisms in place to monitor and take actions when indirect cost rate proposals have been submitted but no audit action has been taken. However, in recognition of the need to ensure that the contracting officer and the auditor maintain adequate communication, the DFARS case on contract closeout will review whether PGI should include information regarding the action to be taken when a contracting officer believes an audit is not being performed on a timely basis.

d. Training Opportunities in Contract Closeout

Comment: Recommendations were made to—

(1) Increase training to Government and contractor personnel in the area of contract closeout; and

(2) Establish a section in the Defense Acquisition University (DAU) Community of Practice Lessons Learned for contract closeout and reference it in PGI.

DPAP Response: As part of the review of best practices, DPAP will work with DAU to determine if/what training needs to be expanded in the area of contract closeout and to establish a community of practice that can provide the best contract closeout practices for use by DoD contracting personnel.

e. Delineate the Roles and Responsibilities of Parties in the Contract Closeout Process

Comment: The following recommendations were made to delineate roles and responsibilities of all parties to contract closeout:

(1) Describe in the DFARS or PGI the roles and responsibilities for all parties involved in the contract closeout process.

(2) Designate the ACO as the central control point for closeout of a contract and for use of the quick closeout process. One respondent noted that this could be problematic, since the ACO is not as knowledgeable as the PCO, and the PCO is a critical player in resolving issues related to older contracts and contract funding (e.g., cancelled funds).

(3) Specifically identify the roles and responsibilities for cost reconciliations and the final determination of contract value when there are discrepancies between the Government's and the contractor's accounting records.

DPAP Response: DPAP agrees that such delineation would help facilitate the contract closeout process. Therefore, as part of the DFARS case, the PGI will be amended to describe the contract closeout process and to delineate the roles and responsibilities of all parties involved in that process.

Regarding contracts for which there are discrepancies in cost reconciliations, DoD has legislative authority to close out contracts entered into prior to October 1, 1996, that have an unreconciled balance of $100,000 or less. Absent additional legislative authority, DPAP does not believe it can provide contracting officers with the authority to close out such contracts.

f. Contract Closeout in the Absence of Defense Finance and Accounting Service (DFAS) Approval

Comment: A recommendation was made to allow the ACO to close out the contract if, after notifying DFAS that a contract is administratively complete, no response is received within 60 days of the notification.

DPAP Response: Since DFAS has the accounting responsibility within DoD, it would not be appropriate to close out the contract without DFAS approval. However, the DFARS case on contract closeout will include a review of whether PGI/DFARS language is needed to address the actions to be taken when the contracting officer believes a timely response has not been received from DFAS.

5. Submission of Contract Closeout Data

a. Contract Closeout as a Condition for Future Awards or as an Element of Past Performance

Comment: One respondent recommended including contractor performance in submitting closeout data, in the contractor's past performance ratings. Another respondent noted that any data submitted for past performance must distinguish between contractor performance in submitting the closeout documents and Government-controlled actions. A third respondent recommended precluding the award of future contracts for contractors that continually fail to submit the required contract closeout items.

DPAP Response: The Office of Federal Procurement Policy Guide on Best Practices for Collecting and Using Current and Past Performance Information (May 2000) includes consideration of timely completion of all administrative requirements under ''Business Relations'' as a criterion for evaluating past performance. The DFARS case on contract closeout will review whether contract closeout should be a more specific past performance element. Depending on the results of this review, DPAP may consider revisions to the DFARS and/or may make recommendations to the FAR Council for revisions to the current FAR language on contract closeout.

DPAP does not believe it would be appropriate to broadly prohibit the award of future contracts to contractors with any history of failing to submit contract closeout items. To do so would be tantamount to debarment, and DPAP does not believe that failure to submit contract closeout items meets the debarment criteria at FAR 9.406–2.

b. Incentives for Fulfillment of Contractor Closeout Requirements

Comment: The following recommendations were made to encourage contractors to complete contract closeout activities:

(1) Include specific contractual terms that provide positive and/or negative consequences for the fulfillment of contractor closeout commitments.

(2) Provide award fees or profit factors based on the submission of contract closeout documents.

(3) Include submittal of contract closeout documents a milestone for receiving a performance-based payment.

(4) Include contract closeout activities as a separately priced contract line item. A specific recommendation was made to address the allowability of contractor costs associated with required contract cost and payment reconciliations.

DPAP Response: The DFARS case on contract closeout will review whether regulatory clarification/revisions are needed to provide additional incentives (positive and/or negative) for encouraging submission of contractor closeout data. This will include a review of the criteria for determining whether to impose a withhold, the approval or denial of direct billing authority, the potential impact on contractor past performance evaluations, and the inclusion of a contract closeout milestone in determining performance-based payments.

DPAP does not believe that award fees or other profit factors are appropriate means by which to compel the contractor to complete contract closeout responsibilities, since award fee and profit criteria are intended to focus on cost, quality, and technical performance. They are not intended to be a means to further reward contractors for satisfying basic contract administration responsibilities.

DPAP also does not believe it is advisable to include contract closeout activities as a separately priced contract line item. This would most likely be perceived as increasing the cost or price of the contract, rather than simply encouraging submittal of the closeout data. Similarly, DPAP does not believe that it is necessary to promulgate specific cost allowability rules related to contractor reconciliation efforts. The contractor should consider the cost of normal contract closeout (including reconciliations) when submitting proposals for contracts and/or indirect cost rates. Furthermore, in those instances where unusual circumstances require the contractor to expend effort that is charged as a direct cost beyond

the current contract period of performance, the contractor should request a contract modification to address these costs, including any necessary extension to the period of performance.

6. Missing Documentation

a. Determination That a Contract Is Administratively Complete

Comment: A recommendation was made to authorize the ACO to issue a final determination that a contract is administratively complete if the Government and the contractor agree that no additional services or products will be received by the Government and there are no outstanding actions.

DPAP Response: DPAP believes that the current listing of actions at FAR 4.804 for determining that a contract is administratively closed provides sufficient criteria for the contracting officer. Ensuring that the items in this listing are all complete is akin to ensuring that there are no outstanding actions. Thus, DPAP does not plan further action with regard to this recommendation.

b. Adequacy of the Government's Contract Files

Comment: A recommendation was made to specify in the regulations and/or PGI what constitutes an adequate contract file (e.g., modifications, DD 250's, invoices, payment vouchers) for purposes of contract closeout, and to require that contracting officers maintain such a file.

DPAP Response: The DFARS case will review whether guidance should be added to PGI to address what constitutes an adequate contract file (see response to Comment 6.a. above). Currently, FAR Subpart 4.8 delineates the applicable contract file documentation requirements depending on the product or service acquired and contract type and complexity. FAR 4.802 allows agencies to retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media. The Electronic Data Access (EDA) system is DoD's electronic file cabinet containing electronic versions of contractual documents, including modifications, and is accessible via the Internet 24 hours a day at *http://eda.ogden.disa.mil.* Also, DFAS has an ongoing Voucher attachment system initiative that uploads supporting documentation for disbursing vouchers in EDA. However, it may be advisable to include these requirements, as well as any other applicable contract file documentation information, in PGI.

7. Quick Closeout Procedures

a. Broaden the Use of Quick Closeout Procedures

Comment: Three respondents recommended broadening the use of quick closeout procedures by raising the dollar threshold and/or percentage limitations currently in the regulations and by extending the existing DCMA deviation. Two respondents recommended considering mandating the use of quick closeout procedures for low-dollar value contracts and making a thorough analysis to determine the numbers of contracts that would be affected by such a mandate.

DPAP Response: The DFARS case on contract closeout will review whether it is appropriate to amend the DFARS to expand on the existing quick closeout criteria at FAR 42.708. In addition, depending on the results of this review, DPAP also may make recommendations to the FAR Council for revisions to the current FAR language on quick closeout.

b. Require Mutual Agreement To Use Quick Closeout Procedures

Comment: A recommendation was made to provide for the quick closeout process to be one of mutual agreement between the Government and the contractor.

DPAP Response: DPAP believes that the FAR already clearly requires mutual agreement between the Government and the contractor in order to use quick closeout procedures. FAR 42.708 requires the contracting officer to ''negotiate'' the settlement of indirect costs for a specific contract, in advance of the determination of the final indirect cost rates. In addition, FAR 42.708 allows the use of quick closeout procedures only if ''agreement'' can be reached on a reasonable estimate of allocable dollars. Thus, DPAP does not believe any further action is needed regarding this recommendation.

c. Justification for Not Using Quick Closeout Procedures

Comment: A recommendation was made to require that an ACO perform a risk assessment to justify not using quick closeout procedures, when final indirect cost rates have not been established. In conjunction with this recommendation, one respondent recommended that the risk assessment include a cost/benefit analysis of applying quick closeout procedures.

DPAP Response: DPAP believes it is unnecessarily burdensome to require a risk assessment whenever quick closeout procedures are not used and final indirect cost rates have not been established. However, the DFARS case will review whether regulatory revisions are needed to address the criteria a contracting officer should consider for applying quick closeout procedures. Depending on the results of this review, DPAP may consider revisions to the DFARS and/or may make recommendations to the FAR Council for revisions to the current FAR language on quick closeout.

d. Evaluation of the Use of Quick Closeout Procedures

Comment: A recommendation was made to evaluate instances in which the criteria for using quick closeout applied, but the quick closeout procedure was not used by the ACO.

DPAP Response: As part of the DFARS case on contract closeout, input will be obtained from contracting personnel as to if/why contracting officers do not apply quick closeout procedures when the facts/circumstances satisfy the FAR criteria for use of such procedures. This input will be considered in determining whether any regulatory revisions are needed regarding the quick closeout procedures.

8. Subcontracts

a. Closeout Plan for Subcontracts

Comment: A recommendation was made to require a contract closeout plan as part of the subcontracting plan.

DPAP Response: DPAP does not believe there would be significant benefit to requiring a specific contract closeout plan as part of the subcontracting plan. However, the DFARS case on contract closeout will include a review to determine whether existing regulations should be amended to emphasize contract closeout in discussing contractor responsibilities for managing subcontracts.

b. Require the Use of Quick Closeout Procedures for Subcontracts

Comment: A recommendation was made to require the use of quick closeout procedures for subcontracts, including interdivisional transfers, to the maximum extent possible.

DPAP Response: FAR 42.202 states that it is the prime contractor's responsibility to manage its subcontracts under existing regulations. However, the DFARS case on contract closeout will review whether regulatory revisions are needed to address subcontracts.

c. Waiver of Final Subcontract Assist Audits

Comment: A recommendation was made to establish a threshold for assist audits and to permit prime contractors

to waive audits for subcontracts that are below this established threshold when the lack of negotiated subcontractor indirect rates is preventing closeout of the prime contract.

DPAP Response: The DFARS case on contract closeout will review if/how subcontracts should be closed when subcontract final indirect cost rates have not been negotiated. Since DPAP believes that the contract closeout process is significantly reduced if contractors (including subcontractors when required) submit an adequate final indirect cost rate proposal and prepare a Cumulative Allowable Cost Worksheet (CACWS) when the indirect cost rates are finalized, the DFARS case will also review the extent to which a final indirect cost rate proposal and a CACWS should be required and/or encouraged for subcontractors/subcontracts.

d. Requirement for Audit Coordination Between the Prime Contractor and DCAA

Comment: A recommendation was made to require DCAA to provide feedback to prime contractors on the status of assist audits.

DPAP Response: The DFARS case on contract closeout will review the current process to assess whether DFARS revisions are needed to address the steps a prime contractor can take to determine the status of DCAA assist audits of subcontract costs.

e. Use of Third-Party Auditors to Complete Subcontract Assist Audits

Comment: A recommendation was made to use third-party auditors for subcontract audits where the Government does not already have a presence, similar to the policy on Other Transactions.

DPAP Response: DPAP does not believe that any action is needed with regard to this comment. In accordance with DoD Directive 5105.36, Defense Contract Audit Agency (DCAA), DCAA is responsible for performing all contract audits required in the negotiation, administration, and settlement of DoD contracts and subcontracts. Should the prime contractor have any issues related to audits of subcontractors, those issues should be raised with the cognizant DCAA auditor.

9. Reconciliations

a. Require Annual Reconciliation of Contract Payments

Comment: A recommendation was made to encourage or require that the Government and the contractor reconcile payments on an annual basis.

DPAP Response: The DFARS case on contract closeout will review if/when it would be feasible to establish an annual contract reconciliation process.

b. Establish Thresholds for Performing Contract Reconciliations

Comment: A recommendation was made to consider establishing dollar thresholds for performing contract reconciliations.

DPAP Response: DPAP does not believe it would be statutorily permitted to establish dollar thresholds below which contract reconciliations would not be required. Absent statutory authority, DPAP does not believe it can provide the contracting officer with the authority to close out unreconciled contracts.

c. Require Replacement Funds Be Acquired on a Timely Basis

Comment: A recommendation was made to require that replacement funds be obtained on a timely basis.

DPAP Response: The DFARS case on contract closeout will consider whether to add specific language to PGI emphasizing the need for agencies to obtain replacement funds on a timely basis.

d. Require That DFAS Notify Contractors of Payment Offsets

Comment: A recommendation was made to require that DFAS notify the contractor when there is an offset to a contractor payment.

DPAP Response: DFAS currently notifies contractors by letter and/or telephone when there is an offset. The DFARS case on contract closeout will include a review of whether the DFARS/PGI should be amended to describe this process.

e. Require the Update of Cumulative Accounting Classification Reference Number (ACRN)/Contract Line Item Numbering (CLIN) Schedules After Each Contract Modification

Comment: A recommendation was made to require the updating of the cumulative ACRN/CLIN schedule each time a modification is issued.

DPAP Response: The DFARS case on contract closeout will review whether PGI language is needed to emphasize the importance of maintaining an updated ACRN/CLIN schedule.

f. Provide Contractors Access to Contract ACRN and Mechanization of Contract Administration Services (MOCAS) Data, and Consider Simplifying ACRN/CLIN Accounting

Comment: A recommendation was made that DoD should provide contractors with read-only access to their contract ACRN data, allow visibility to all modifications, add CLIN data to MOCAS, and consider alternatives to and simplify the ACRN/CLIN accounting.

DPAP Response: DPAP does not believe any action is needed with regard to this recommendation, because the access described is already available. A contractor can request access to the contract ACRN data by contacting the cognizant paying office identified on the DFAS Web site at *http://www.defenselink.mil/dfas/about/Contacts.html.* In addition, contract information, including modifications, can be accessed on the Internet via the Electronic Document Access system at *http://eda.ogden.disa.mil.* Furthermore, the ACRN/CLIN data is already included in MOCAS.

With regard to simplifying the ACRN/CLIN accounting, DoD is working to develop a comprehensive data structure that will support the requirements for budgeting, financial accounting, cost/performance management, and external reporting throughout the Department. This effort is intended to standardize categorization of financial information along several dimensions to support financial management and reporting functions and, when implemented, will provide a common foundation to track, process, and report DoD business transactions.

g. Automated Structuring of Contract CLINS/SubCLINS

Comment: A recommendation was made to not allow agency accounting systems to drive how contracts are structured, i.e., systems automatically add SubCLINs to a CLIN.

DPAP Response: DPAP believes the DFARS adequately addresses this issue. The criteria for establishing CLINs are specified in DFARS 204.7103 and 204.7104.

10. Contract vs. Delivery Order Basis

a. Clearance of Government Property, Final Patent Reports, Security Release, etc.

Comment: A recommendation was made to clear the Government property, final patent report, security release, and other pertinent documents one time against the contract instead of on an order-by-order basis.

DPAP Response: The DFARS case on contract closeout will review if/when it may be appropriate to provide for a one-time clearance of the Government property, final patent report, security release, and other pertinent documents instead of on an order-by-order basis.

b. Close Contracts by Task Order

Comment: Two recommendations were made to close out all task orders as they are completed instead of waiting until the end of the contract, or to explore best practice options.

DPAP Response: The DFARS case on contract closeout will review whether DFARS/PGI language is needed to specifically address the closeout of task orders. Note that DCMA currently has a process to close out task orders as they are completed to facilitate closeout of indefinite-delivery, indefinite-quantity contracts.

c. Contract Period of Performance

Comment: A recommendation was made to clarify language on the period of performance for a task order versus that specified in the basic contract, i.e., if and when the task order period of performance may fall outside the period of performance specified in the basic contract.

DPAP Response: The DFARS case will review whether the regulations should be revised to specifically address issues regarding contract and task order periods of performance.

11. Time-and-Materials (T&M) Contracts

a. Streamline Closeout Procedures

Comment: A recommendation was made to streamline closeout procedures for T&M contracts that are valued at less than a specified amount (e.g., $1 million).

DPAP Response: The DFARS case on contract closeout will review if and when streamlined closeout procedures would be appropriate for T&M contracts. Note that the May 17, 2005, DCAA memorandum, Audit Guidance on Low Risk Time and Material/Labor Hour Contract Closeout Initiative, provides audit procedures for expediting the closeout of T&M contracts valued at $1 million or less when contractors meet certain low risk criteria. The memorandum (05–PPD–037(R)) is available at *http://www.dcaa.mil/.*

b. Verification of Employee Qualifications

Comment: A recommendation was made for DoD guidance to provide extra focus on employee qualifications when closing out T&M contracts.

DPAP Response: The review of employee qualifications should be a part of the contracting officer representative and/or audit responsibilities during contract performance so as to ensure that employees are properly qualified before they perform contract work. DPAP is currently working to provide PGI guidance to delineate the duties of all parties in the contract administration process. The review of employee qualifications will be an integral part of this delineation of duties. Thus, while the Government is not precluded from reviewing employee qualifications at the end of the contract, DPAP believes this issue is better addressed in the guidance on administering T&M contracts, rather than any specific guidance on contract closeout.

12. Classified Contracts

Comment: Two recommendations were made for the use of quick closeout procedures, or certified year-end rates, for all classified contracts.

DPAP Response: DPAP does not believe it would be advisable to provide blanket quick closeout authority for all classified contracts. However, the DFARS case on contract closeout will review whether there are any particular characteristics of classified contracts that would warrant more extensive use of quick closeout procedures than is provided for non-classified contracts.

13. Classified Documents

Comment: Two recommendations were made to develop a contract clause that provides clear instructions for the disposition of classified documents, and to allow the contracting officer the authority to transfer classified documents to other contracts.

DPAP Response: The DFARS case on contract closeout will review whether language on classified contracts should be added to PGI. In DoD, the security classification management program implements the requirements of the National Industrial Security Program Operating Manual (NISPOM). The security office receives, evaluates, interprets, and obtains clarification and changes to classification guidance for contracts and proposals, and issues classification guidance. Classification and distribution guidance is available at *https://intranet.acq.osd.mil/intranet/admin/security/secguide/Implemnt/Altrnats/Classif.htm.* In DoD contracts, the DD Form 254, Department of Defense Contract Security Classification Specification, establishes security classification levels of classified information and hardware, downgrading, and declassification instructions, public dissemination instructions for information related to the contract, and other special security requirements. If a DD Form 254 is not provided with a solicitation or contract, the security office and the contracting office are required to jointly take the actions necessary to obtain one.

14. Government Property

Comment: The following recommendations were made relating to Government property:

(1) Distinguish between the role of the ACO and that of the Government property administrator.

(2) Provide contracting personnel with disposition authority for special tooling, special test equipment, and other property with an acquisition value of $5,000 or less, and be specific in identifying who has disposition authority (i.e., Government property administrator).

(3) Provide contracting officers with the authority to make the determination as to whether property should be reutilized or scrapped, and to scrap military unique items that have been rejected for reutilization by the buying agency. There is little value in retaining these items if they have been rejected by the buying agency.

(4) Delegate authority to the Government property administrator to transfer property to other contracts (e.g., to follow-on contracts to reduce costs).

(5) Permit the Government property administrator to grant accountability relief on the spot for recorded property that was not found at contract completion if (a) the contractor has an approved property system, (b) the lost item has an acquisition date of five years or later, and (c) the lost item has an acquisition cost of $100,000 or less. The Government property administrator would retain the right to a full Lost/Damaged/Destroyed Report.

(6) Establish a site property and/or plant-wide disposition contract for each business element location. As each contract is completed, all property would be automatically transferred to the disposition contract. Each respective buying office could fund a line item on the disposition contract for disposal of its property, or the predominant agency could fund the entire contract.

(7) Transfer accountability for property to the Government for purposes of contract closeout once property is submitted on an inventory schedule. This is an efficient method, because it removes property from the contract.

(8) Consider a system to allow the capture of data related to DoD property in the possession of contractors, since DD Form 1662 was discontinued after fiscal year 2005.

(9) Develop a contract clause that provides clear instructions for the disposition of Government property.

(10) Provide contracting officers with the authority to remove the property clauses from contracts where there is no

probability of issues in these areas (e.g., service contracts with little or no property).

(11) Set a timeframe (e.g., 90 days) at the end of the contract for disposition of lost property.

(12) Clarify an apparent inconsistency between final contract closeout and the timeframe for overall closeout of Government property.

DPAP Response: DPAP anticipates that a final rule revising FAR coverage on Government property will be issued in early 2007. The FAR rule is anticipated to include a number of changes to existing Government property rules. As such, DPAP believes it would be premature to attempt to address the specific recommendations provided with regard to Government property in advance of issuance of that final rule. Upon issuance of the rule, DPAP will review whether the above comments warrant any additional regulatory or PGI coverage.

15. Patents

a. Contract Closeout Based on Negative Interim and Final Patent Reports

Comment: A recommendation was made to allow the contracting officer to proceed with contract closeout within a specified timeframe (e.g., 30 days), if a contractor has submitted a negative report on all interim and final patent right reports, unless the contracting officer receives notification that there are patent issues precluding such closeout.

DPAP Response: The DFARS case on contract closeout will review whether DFARS/PGI language should be added to address if/when a contract could or should be closed out if all interim reports and the final patent reports are negative. Note that current DCMA contract closeout procedures provide a structured timeframe of 60 days for proceeding with closeout when patent reports containing a negative reply are received.

b. Omission of Patent Clauses From Contracts

Comment: Three recommendations were made to provide contracting officers with the authority to remove the patent clauses from contracts where there is no probability of issues in these areas (e.g. service contracts with no patent issues), to clarify PGI as to when the clause is needed, and to reconsider how often to issue negative reports on patents. Currently, a negative report is required every 12 months.

DPAP Response: DPAP does not believe any guidance is needed in the area of contract closeout to address this issue. However, DPAP notes that DoD has a current DFARS case regarding patents, data, and copyrights. Thus, DPAP will forward this recommendation to the cognizant DFARS committee for consideration.

c. Review FAR 52.301 Matrix for Mandatory and Discretionary Clauses

Comment: A recommendation was made to review the FAR 52.301 matrix, which identifies contract clauses that are mandatory versus those that are discretionary, to ensure that clauses are not being included in contracts unnecessarily.

DPAP Response: The current matrix at FAR 52.301 indicates when a FAR clause is required, required as applicable, or optional. Thus, DPAP does not believe any further action is necessary with regard to this recommendation.

16. Planning

Comment: A recommendation was made to require a contract closeout plan as part of the acquisition plan. The contract closeout plan should consider the up-front effort, perceived benefit, and dollar threshold. The plan should also include a memorandum of agreement between the contractor and the Government that weighs the costs and benefits of a closeout plan.

DPAP Response: DPAP does not believe that there would be significant benefit to requiring a specific contract closeout plan as part of the acquisition plan. However, the DFARS case on contract closeout will review whether the DFARS/PGI should be revised to address how contract closeout should be considered in developing the acquisition plan.

17. Mechanization of Contract Administration Services (MOCAS)

Comment: A recommendation was made to revise MOCAS so that it is automatically updated to reflect the current performance period when the contract period is extended.

DPAP Response: DPAP will work with DCMA to ensure that MOCAS capabilities include providing current contract period of performance information.

18. Electronic Submission

Comment: Two recommendations were made to study Wide Area WorkFlow (WAWF) for duplication, because DD Form 1594, Contract Completion Statement, and DD Form 1597, Contract Closeout Checklist, duplicate the current electronic closeout processes being done in Procurement Defense Desktop (PD2).

DPAP Response: DPAP does not believe any action is needed with regard to this recommendation, because the use of WAWF does not duplicate PD2. DD Form 1597 is needed, because not all contracting offices use PD2. When the forms are generated electronically in PD2, the forms do not have to be completed manually. However, PD2 does permit manual closeout using DD Form 1597 and DD Form 1594 for orders under blanket purchase agreements.

19. Allowability of Contract Closeout Costs

a. Definition of ''Period of Performance'' and Guidance on the Allowability of Costs Incurred After the Period of Performance

Comment: Four recommendations were made to clarify the regulations to specify what is meant by the period of performance, or to provide regulations or guidance as to the allowability of costs incurred for contract closeout after the end of the performance period, such as subcontractor costs billed and paid outside the period of performance, or material transfers that occur after the period of performance.

DPAP Response: DPAP does not believe it is necessary or advisable to provide blanket guidance regarding this issue. The circumstances noted in the recommendation must be addressed on a case-by-case basis. DPAP believes the current regulations adequately address this issue. FAR 31.201–2, Determining Allowability, states that a cost is allowable only when the cost is reasonable, is allocable, complies with applicable Cost Accounting Standards or generally accepted accounting principles, complies with the terms of the contract, and complies with the specific provisions in FAR Subpart 31.2. In reading these allowability criteria, the key criteria for this particular issue are the terms of the contract. The contractor should consider the cost of normal contract closeout when submitting proposals for contracts and/or indirect cost rates. Furthermore, when unusual circumstances will require the contractor to expend effort that is charged as a direct cost beyond the current contract period of performance, the contractor should request a contract modification to extend the period of performance. With regard to subcontract costs and material transfers, when the contractor becomes aware that such costs may be incurred outside the period of performance, the contractor should notify the contracting officer and should request an appropriate contract modification to the existing period of performance.

b. Guidance on Determining ''Physical Completeness''

Comment: One recommendation was made to provide guidance on ''physical completion.''

DPAP Response: DPAP does not believe additional guidance on this issue is necessary. FAR 4.804–4 provides specific criteria that must exist for a contract to be physically complete.

20. Statute of Limitations

Comment: Two recommendations were made to shorten the statute of limitations for submission of a claim (currently six years) to mitigate issues concerning expired funds, lost documentation, software changes, and Government/contractor storage costs; and to consider that reducing the period would set precedence to reduce the time requirements in other areas.

DPAP Response: The length of time allowed for the submission of a claim is directly related to the period specified in the Contract Disputes Act (41 U.S.C. 605), which was amended upon enactment of the Clinger-Cohen Act in 1996. Any revision to this period would require a change to existing statutes. DPAP believes this issue is better addressed by focusing on the systemic issues that hinder contract closeout rather than pursuing a legislative change.

21. Transportation Clause

Comment: A recommendation was made to revise the clause at DFARS 252.247–7023, Transportation of Supplies by Sea, to reduce the needless inclusion of this clause in contracts or to consider issuing guidance specifying when the clause needs to be used. Currently it is often included when obviously unnecessary.

DPAP Response: DPAP will refer this issue to the DFARS Transportation Committee to review whether the current clause prescription should be revised.

22. Settlement of Contract Debts

Comment: A recommendation was made to permit the contracting officer to negotiate the settlement of contract debts across a number of contracts. This would avoid the need to find replacement funds, which often takes years and substantially delays the closeout process.

DPAP Response: DPAP does not believe any guidance is needed in the area of contract closeout to address this issue. However, DPAP notes that there is a current FAR case that is focusing on the contract debt process. Therefore, this recommendation will be forwarded to the cognizant FAR team for consideration.

23. Consolidation of Guidance on Contract Closeout

Comment: A number of recommendations were made that the DCAA Contract Audit Closeout Guide be incorporated into PGI to establish a single reference source for contracting personnel, and that the PGI be supported with training.

DPAP Response: DPAP agrees that providing a consolidated resource for contract closeout guidance will facilitate the process. Thus, the DFARS case on contract closeout will include PGI language on contract closeout. In addition to providing basic guidance addressing the contract closeout process, this PGI section will also include links to agency guidebooks, training, and any other relevant information.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 207

RIN 0750–AF39

Defense Federal Acquisition Regulation Supplement; Lease of Vessels, Aircraft, and Combat Vehicles (DFARS Case 2006–D013)

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

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address statutory provisions relating to leasing. The proposed rule permits the lease of a vessel, aircraft, or combat vehicle only if the contract will be long-term or will provide for a substantial termination liability.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 23, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D013, 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 2006–D013 in the subject line of the message.
- *Fax:* (703) 602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Gary Delaney, OUSD (AT&L) DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

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

FOR FURTHER INFORMATION CONTACT: Mr. Gary Delaney, (703) 602–8384.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2401, as amended by Section 815 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163), permits DoD to award a contract for the lease of a vessel, aircraft, or combat vehicle only if the contract will be long-term or will provide for a substantial termination liability, and if the Secretary concerned fulfills certain other requirements. Prior to the enactment of Public Law 109–163, the provisions of 10 U.S.C. 2401 applied to vessels and aircraft; Section 815 of Public Law 109–163 amended 10 U.S.C. 2401 to also include combat vehicles. This proposed rule amends DFARS 207.470 to reflect the statutory provisions.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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.*, because the rule relates primarily to DoD planning and budget considerations with regard to leasing of vessels, aircraft, and combat vehicles. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D013.