

f. Demonstrate familiarity with the contents of the IMO Merchant Ship Search and Rescue Manual (MERSAR).

2. If all seafarers (i.e., all persons employed on board other than passengers) were required to receive familiarization training or instruction on what to do in an emergency?

3. If all seafarers with responsibility for safety or for preventing pollution (including all subject to manning requirements or members of fire parties) had to receive basic safety-training in fire-fighting, first aid, personal survival, and personal safety?

4. If all candidates for engineering licenses and upgrades for service on seagoing ships were required to demonstrate competence in electronic control engineering (some training institutions or schools call this "automated-process-control engineering")?

5. If all candidates for deck and engineer licenses and upgrades were required to demonstrate competence in first aid aboard ship?

6. If all instructors were required to receive guidance in instructional techniques?

7. If all candidates' competence and proficiency in a skill or area of knowledge had to be evaluated by an "assessor" (one that evaluates a candidate's competence and proficiency in a skill or area of knowledge)?

8. If all assessors were required to receive guidance in assessment methods and practice?

9. If all training and assessment were subject to a qualify-standards system that included independent monitoring and evaluation to ensure that stated objectives were being achieved? (Please address costs of development, implementation, and operating, as well as other costs you consider important.)

10. If companies that own or operate seagoing ships were required to (a) maintain records on their seafarers' experience, training, medical fitness, and competency; (b) ensure that those persons newly assigned to their ships were familiarized with their specific duties there, the ships' arrangements, and their equipment; and (c) ensure that the ships' complements can coordinate their activities in an emergency?

11. If watchkeeping personnel on seagoing ships had to get not less than 10 hours of rest a day, including not less than 6 continuous hours, with only strictly limited exceptions?

12. If simulator training were required or necessary for compliance with the 1995 Amendments to STCW? (Please address costs of acquisition and operating, and costs to modify existing programs.)

13. If new training courses needed development to meet some requirements? (Please estimate the complete cost of development and state a range of costs.)

The above list may not be complete. It should suggest the scope and nature of requirements that must be addressed in the implementation of the 1995 Amendments to STCW. The Coast Guard also seeks comments on the impacts associated with requiring practical demonstration in addition to an exam.

The Coast Guard would also appreciate having a breakdown of costs, beyond these costs, associated with courses that currently offer training in the areas mentioned in questions 1 through 11.

The Coast Guard also requests views on the distribution of new costs that may result from implementation of the 1995 Amendments to STCW. For example, to what degree might training costs be borne by employers, schools, employees, unions, or individuals as prospective future employees?

In responding to the above questions, please identify your status or affiliation in the marine industry (e.g., owner-operator, union, maritime school, seafarer), and please explain the basis on which your costs were calculated.

Dated: November 1, 1995.

J.C. Card,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

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BILLING CODE 4910-14-M

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 216, 217, 233, 237, 247, 250, and 252

[DFARS Case 95-D703]

#### Defense Federal Acquisition Regulation Supplement; Multiyear Contracting and Other Miscellaneous Provisions

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comment.

**SUMMARY:** The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify guidance on multiyear contracting; implement sections of the Federal Acquisition Streamlining Act of 1994 pertaining to payment of claims and Civil Reserve Air Fleet Contractors; and conform the DFARS to recent revisions

to the FAR pertaining to determinations and findings and personal services contracts.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 12, 1996 to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D703 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melissa Rider, at (703) 602-0131. Please cite DFARS Case 95-D703.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. This proposed rule implements the following sections of the Act:

Section 2301, Certification of Contract Claims—This section of the Act repeals 10 U.S.C. 2410e and revises 10 U.S.C. 2410. The new statutory language aligns DoD claims certification requirements with those for civilian agencies (as implemented in the FAR at 33.207), thereby eliminating the need for DFARS Subpart 233.70 and the associated clause at DFARS 252.233-7000, both of which are deleted by this proposed rule. The rule also amends DFARS 233.205 and 250.102 to add references to 10 U.S.C. 2410(b), which places restrictions on legislative payment of claims.

Section 3031, Definitions; Section 3032, Consolidation of Provisions Relating to Contractual Commitment of Aircraft; and Section 3033, Use of Military Installations by Contractors—These sections of the Act expand upon existing coverage in United States Code governing the use of Civil Reserve Air Fleet (CRAF) Contractors, principally upon the relationship between the DoD and CRAF contractors. The proposed rule adds a new DFARS subpart at 247.70 to address the Act's definition of a CRAF contractor, the obligations of a CRAF contractor to the Government, and how the CRAF program impacts the Government's choice of air transportation sources.

This proposed rule also reorganizes and clarifies DFARS guidance pertaining to multiyear contracting in Subpart 217.1. The revised coverage

contains DoD-unique statutory multiyear contracting requirements applicable to services, supplies, weapon systems, and economic order quantity procurements.

In addition, the proposed rule amends the DFARS as follows to conform to recent revisions to the FAR: (1) The rule deletes DFARS coverage at 216.301-3 which addresses a determination and findings requirement for the use of the cost-reimbursement contracts that was eliminated from the FAR by Item IV of Federal Acquisition Circular 90-30 (60 FR 37772, July 21, 1995); (2) The rule amends DFARS coverage on personal services contracts at 237.104 to remove the reference to "GS-18," Although "GS-18" pay rates now correlate to "SES 6" under current Federal grade structures, recent changes to 5 CFR 304.105(a) do not allow increased payments to certain professional categories. The proposed change to DFARS 237.104 is related to the FAR revisions pertaining to expert services published as Item II of Federal Acquisition Circular 90-31 (60 FR 42648, August 16, 1995), as DFARS 237.104 establishes a "cap" on the rates that can be paid such experts.

#### B. Regulatory Flexibility Act

The proposed rule is not expected 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 primarily reorganizes existing DFARS coverage on multiyear contracting for clarity; adds a new subpart which only applies to the acquisition of air transportation; and makes minor revisions to conform to the DFARS to statutory or regulatory requirements. An initial regulatory flexibility analysis, therefore, has not been performed. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D703 in correspondence.

#### C. The Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements which 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 216, 217, 233, 237, 247, 250, and 252

Government procurement.  
Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, it is proposed that 48 CFR Parts 216, 217, 233, 237, 247, 250, and 252 be amended as follows:

#### PART 216—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Parts 216, 217, 233, 237, 247, 250, and 252 continues to read as follows:

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

#### 216.301 and 216.301-3 [Removed]

2. Sections 216.301 and 216.301-3 are removed.

#### PART 217—SPECIAL CONTRACTING METHODS

3. Subpart 217.1 is revised to read as follows:

##### Subpart 217.1—Multiyear Contracting

Sec.

217.101 Definitions.

217.170-1 All multiyear contracts.

217.170-2 Multiyear contracts used to purchase services.

217.170-3 Multiyear contracts used to purchase supplies.

217.170-4 Multiyear contracts for weapon systems.

217.170-5 Multiyear contracts that employ economic order quantity procurement.

##### 217.101 Definitions.

*Advance procurement*, as used in this subpart, means an exception to the full funding policy which allows acquisition of long leadtime items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, and components as well as costs associated with the further processing of those materials, parts, and components.

##### 217.170-1 All multiyear contracts.

(a) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items procured (10 U.S.C. 2306b(j)).

(b) Before a multiyear contract is awarded, the cost of that contract shall be compared against the cost of an annual procurement approach, using a present value analysis. The multiyear contract shall not be awarded unless the analysis shows it results in the lower

cost (Section 9021, Public Law 101-165, and similar sections in subsequent Defense appropriations acts).

(c) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 10 days before termination of any multiyear contract authorized by Congress (Section 9021, Public Law 101-165, and similar sections in subsequent Defense appropriations acts.)

##### 217.170-2 Multiyear contracts used to purchase services.

(a) *Limitations.*

(i) 10 U.S.C. 2306(g).

(A) DoD may enter into multiyear acquisitions for the following services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated:

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training); and

(4) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(B) This authority may be used as long as the contract—

(1) Does not extend beyond five years;

(2) Complies with FAR 17.101 through 17.105; and

(3) Performance years do not extend beyond the end of any fiscal year.

(ii) 10 U.S.C. 2829.

(A) DoD may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(B) This authority may be used as long as the contract—

(1) Does not extend beyond four years;

(2) Complies with FAR 17.101 through 17.105; and

(3) Performance years do not extend beyond the end of any fiscal year.

(iii) Award of a multiyear contract for services requires a written determination by the head of the agency (10 U.S.C. 2306(g)(1)) that—

(A) There will be a continuing need for the services and incidental supplies;

(B) Furnishing the services and incidental supplies will require—

(1) A substantial initial investment in plant or equipment; or

(2) The incurrence of substantial contingent liabilities for the assembly, training or transportation of a specialized work force; and

(C) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations (e.g., economic-lot purchases and more efficient production rates).

**217.170-3 Multiyear contracts used to purchase supplies.**

(a) *Applicability.* This subsection applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.107-4.

(b) A multiyear contract for supplies may be used if, in addition to the conditions listed in FAR 17.105-1 (b)(1) through (5), the use of such contract will promote the national security of the United States.

(c) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before the contracting officer awards—

(1) A multiyear contract containing a cancellation ceiling in excess of \$100 million (10 U.S.C. 2306b(g)); or

(2) A multiyear contract including an unfunded contingent liability in excess of \$20 million (section 9021, Public Law 101-165, and similar sections in subsequent Defense appropriations acts).

(d) Agencies shall establish reporting procedures to meet the requirements of paragraph (c) of this subsection. Submit copies of the notifications to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)/DP), and to the Deputy Assistant Secretary of Defense (Comptroller) (Program/Budget) (OASD(C)(P/B)).

**217.170-4 Multiyear contracts for weapon systems.**

(a) As authorized by 10 U.S.C. 2306b(a), and subject to the conditions in paragraph (b) of this subsection, the head of the agency may enter into a multiyear contract for—

(1) A weapon system, associated items and services, and logistics support for that weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement

to achieve economic lot purchases or more efficient production rates. See 217.170-5 regarding economic order quantity procurement.

(b) The following conditions must be satisfied before a multiyear contract may be awarded under the authority described in paragraph (a) of this subsection:

(1) The Secretary of Defense certifies to Congress that the current five-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A));

(2) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B));

(3) If the value of the multiyear contract exceeds \$500,000,000, the applicable DoD appropriations act specifically provides that a multiyear contract may be used to procure the particular system or system component (Section 9021, Public Law 101-165, and similar sections in subsequent Defense appropriations acts); and

(4) All other requirements of law are met and there are no other statutory restrictions on the use of a multiyear contract for the specific system or component, or statute provides for award of multiyear contracts (Section 9021, Public Law 101-165, and similar sections in subsequent Defense appropriations acts). One such restriction may be achieving specified cost savings. If the agency finds, after negotiations with the contractor(s) that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details about the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD(A&T)/DP for transmission to Congress via the Secretary of Defense and the President (10 U.S.C. 2306b(i)(2)).

**217.170-5 Multiyear contracts that employ economic order quantity procurement.**

The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before awarding—

(a) A multiyear contract providing for economic order quantity purchases in excess of \$20 million in any year; or

(b) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any year (Section 9021, Public Law 101-165 and similar sections in subsequent Defense appropriations acts).

**PART 233—PROTESTS, DISPUTES, AND APPEALS**

4. Section 233.205 is added to read as follows:

**233.205 Relationship of the Act to Public Law 805-804.**

*Limitation on payment.* For payment of either a claim under the Contract Disputes Act of 1978 or equitable adjustment or other particular relief under Public Law 85-804, see 10 U.S.C. 2410(b).

**Subpart 233.70—[Removed]**

5. Subpart 233.70 is removed.

**PART 237—SERVICE CONTRACTING**

6. Section 237.104 is amended by revising paragraph (f)(i) to read as follows:

**237.104 Personal services contracts.**

\* \* \* \* \*

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS-15 (see 5 CFR 304.105(a)).

\* \* \* \* \*

**PART 247—TRANSPORTATION**

7. Subpart 247.70 is added to read as follows:

**Subpart 247.70—Air Transportation by Civil Reserve Air Fleet Contractors**

Sec.

247.7000 Scope of subpart.

247.7001 Definitions.

247.7002 Applicability.

247.7003 Air transportation of DoD passengers and cargo.

247.7004 Civil Reserve Air Fleet.

**247.7000 Scope of subpart.**

This subpart implements the National Security Decision Directive Number 280, National Airlift Policy, dated June 24, 1987, DoD Policy Memorandum on Transportation and Traffic Management, dated June 16, 1994, and 10 U.S.C. 9513, Use of Military Installations by Civil Reserve Air Fleet (CRAF) Contractors. The national defense airlift objective is to ensure that military and civil airlift

resources will be able to meet defense mobilization and deployment requirements in support of U.S. defense and foreign policy commitments. In support of this objective, DoD requirements shall be satisfied by the procurement of airlift from commercial air carriers participating in the CRAF program.

#### 247.7001 Definitions.

As used in this subpart—

*CRAF contractor* means a U.S. civilian air carrier holding a certificate under Title 49 United States Code, Section 41102, which participates in the CRAF program. This definition complies with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, Fly American Act), as implemented in FAR subpart 47.4.

*CRAF participation* means acceptance of the aircraft offered by the contractor into the CRAF program prescribed by the Commander-in-Chief, U.S. Transportation Command, and contractor satisfaction of the other requirements of that program.

*CRAF Program* means a cooperative plan developed by DoD with the U.S. civilian air carrier industry to augment DoD organic airlift capability during national emergencies and defense-oriented situations.

#### 247.7002 Applicability.

This subpart applies to all contracting methods used to acquire air transportation for DoD passengers or property. The contract methods affected include agreements (freight forwarding agreements), bills of lading, transportation requests, tenders, and other transportation forms as well as more traditional contract methods such as contracts and purchase orders.

#### 247.7003 Air transportation of DoD passengers and cargo.

(a) CRAF contractors shall be used to transport DoD passengers and cargo by air unless the contracting officer determines—

(1) Available CRAF contractor airlift is not suitable and responsive to the requirement;

(2) Law, regulation, or international agreement precludes the use of a CRAF contractor; or

(3) The cost of transportation by a CRAF contractor is unreasonable.

(b) If the total transportation charge exceeds \$500,000, the contracting officer shall obtain the concurrence of U.S. Transportation Command (USTRANSCOM/TCJA) and furnish a copy of the determination described in paragraph (a) of this section to

USTRANSCOM/TCJA before using a non-CRAF carrier.

(c) Each contract or agreement shall provide for immediate termination in the event a contractor fails to maintain CRAF membership.

#### 247.7004 Civil Reserve Air Fleet.

Contractor's requests for membership in the CRAF program are processed by the Assistant for Civil Air, Air Mobility Command (AMC), Scott AFB IL 62225-5001. Participation requires the offer and commitment of contractor owned or controlled aircraft, suitable and responsive to military requirements, to the CRAF program and the execution of a CRAF contract. The Assistant for Civil Air, AMC, maintains a current list of CRAF contractors and may be contacted regarding contractor eligibility and membership.

### PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

8. Section 250.102 is added to read as follows:

#### 250.102 Policy.

*Limitation on payment.* Prior to payment of either an equitable adjustment or other particular relief under Public Law 85-804, see 10 U.S.C. 2410(b).

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 252.233-7000 [Removed]

9. Section 252.233-7000 is removed.

[FR Doc. 95-27724 Filed 11-9-95; 8:45 am]  
BILLING CODE 5000-04-M

### 48 CFR Part 252

#### Defense Federal Acquisition Regulation Supplement; Ground and Flight Risk

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify who approves flight crew members, increase the amount of the contractor's financial responsibility for loss or damage to the aircraft from \$1,000 to \$25,000, and make other minor changes in the clauses entitled "Ground and Flight Risk" and "Aircraft Flight Risks."

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before

January 12, 1996, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D028 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This proposed rule amends the clauses at DFARS 252.228-7001, Ground and Flight Risk, and 252.228-7002, Aircraft Flight Risks, based on the recommendations of a Tri-Service Process Review Team, which conducted an intensive 4-month study of contractor flight operations. The most substantive issues relate to approval of the flight crew members and the amount of the contractor's financial responsibility for loss or damage to the aircraft. Procedures for authorizing contractor's flight crew members and flight are clearly delegated to the Government Flight Representative in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations." With regard to the contractor's financial responsibility for loss or damage to the aircraft, the proposed rule increases the amount from \$1,000 to \$25,000, because \$1,000 does not adequately compensate the Government for the processing costs required to recover the \$1,000, and \$1,000 does not operate as an economic incentive for the contractor to adhere to prudent care of property.

##### B. Regulatory Flexibility Act

The proposed rule is not expected 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 there are only a limited number of defense aviation contractors to which these DFARS clauses apply, and few of those contractors are small businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D028 in correspondence.