

the portion of the requirement performed on a time-and-materials or labor-hour basis exceeds \$1 million, the approval authority for the determination and findings shall be the senior contracting official within the contracting activity. This authority may not be delegated.

(ii) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis is less than or equal to \$1 million, the determination and findings shall be approved one level above the contracting officer.

(2) *Base period plus any option periods exceeds three years.* The authority of the head of the contracting activity to approve the determination and findings may not be delegated.

(3) *Exception.* The approval requirements in paragraphs (d)(i)(A)(1) and (2) of this section do not apply to contracts that—

(i) Support contingency or peacekeeping operations; or

(ii) Provide humanitarian assistance, disaster relief, or recovery from conventional, nuclear, biological, chemical, or radiological attack.

(B) *Content of determination and findings.* The determination and findings shall contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings shall—

(1) Include a description of the market research conducted;

(2) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;

(3) Address why a cost-plus-fixed-fee term or other cost-reimbursement, incentive, or fixed-price contract or order is not appropriate; for contracts (including indefinite-delivery contracts) and orders for noncommercial items awarded to contractors with adequate accounting systems, a cost-plus-fixed-fee term contract type shall be preferred over a time-and-materials or labor-hour contract type;

(4) Establish that the requirement has been structured to minimize the use of time-and-materials and labor-hour requirements (e.g., limiting the value or length of the time-and-materials or labor-hour portion of the contract or order; establishing fixed prices for portions of the requirement); and

(5) Describe the actions planned to minimize the use of time-and-materials and labor-hour contracts on future acquisitions for the same requirements.

(C) *Indefinite-delivery contracts.* For indefinite-delivery contracts, the contracting officer shall structure contracts that authorize time-and-materials orders or labor-hour orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis, to the maximum extent practicable.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

RIN 0750-AI37

Defense Federal Acquisition Regulation Supplement: Multiyear Contracts—Statutory References and Cancellation Ceiling Threshold (DFARS Case 2014-D019)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update the cancellation ceiling threshold for multiyear contracts and to correct statutory references.

DATES: Effective May 26, 2015.

FOR FURTHER INFORMATION CONTACT: Jennifer Hawes, telephone 571-372-6115.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 79 FR 65331 on September 19, 2014, to amend the DFARS regarding multiyear contracts to update the cancellation ceiling threshold at DFARS 217.170(e)(1)(iv) for consistency with the Federal Acquisition Regulation and correct statutory references. The rule also corrects references to 10 U.S.C. 2306b, 10 U.S.C. 2306c, and section 8008a of Public Law 105-56 throughout DFARS subpart 217.1.

No public comments were submitted in response to the proposed rule.

II. Discussion

There are only minor editorial changes in the final rule from the proposed rule. Cross references contained within some paragraphs required revision since several

paragraphs were redesignated and renumbered due to relocation of text or the addition of new text.

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 not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) regarding multiyear contracts to ensure consistency with the Federal Acquisition Regulation (FAR) and the underlying statutes. The objective of this rule is to increase the cancellation ceiling threshold at DFARS

217.170(e)(1)(iv) from \$100 million to \$125 million to ensure consistency with the threshold at FAR 17.108(b).

In addition, this rule corrects references to 10 U.S.C. 2306b, 10 U.S.C. 2306c, and section 8008a of Pub. L. 105-56 throughout DFARS subpart 217.1 and makes the following clarifications:

- Requests for increased funding or reprogramming for procurement of a major system is relocated under DFARS 217.172(j) since it is in reference to a type of multiyear supply contract.

- A multiyear contract for supplies in excess of \$500 million must be specifically authorized by law in an Act other than an appropriations Act in accordance with 10 U.S.C. 2306b(i)(3).

- A multiyear procurement contract for any system (or component thereof) with a value greater than \$500 million must be specifically authorized in an appropriations act in accordance with 10 U.S.C. 2306b(l)(3).

No comments were received from the public in response to initial regulatory flexibility analysis published in the proposed rule.

Small businesses will not be affected by this rule. The rule will only impact procedures and authorities internal to the Government for multiyear contracts that require a cancellation ceiling up to \$125 million or multiyear contracts for supplies with a value in excess of \$500 million.

The rule imposes no reporting, recordkeeping, or other information collection requirements.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 217

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 217 is amended as follows:

PART 217—SPECIAL CONTRACTING METHODS

1. The authority citation for 48 CFR part 217 continues to read as follows:

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

217.103 [Amended]

2. Amend section 217.103, in the definition for "Military installation," by removing "(10 U.S.C. 2801(c)(2))" and adding "(10 U.S.C. 2801(c)(4))" in its place.

3. Amend section 217.170 by—

- a. Removing paragraph (b);
b. Redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively;
c. Revising newly redesignated paragraphs (d)(1)(ii), (iii), and (iv);
d. In newly redesignated paragraph (d)(2), removing "(e)(1)(i)" and adding "(d)(1)(i)" in its place;
e. In newly redesignated paragraph (d)(3), removing "(e)(2)" and adding "(d)(2)" in its place;
f. In newly redesignated paragraph (d)(4), removing "(e)(1)" and adding "(d)(1)" in its place;
g. In newly redesignated paragraph (d)(5) introductory text, removing "\$100 million" and adding "\$125 million" in its place; and
h. In newly redesignated paragraph (d)(5)(i) introductory text, removing "(e)(1)" and adding "(d)(1)" in its place.

The revisions read as follows:

217.170 General.

* * * * *

(d)(1) * * *

(ii) Employ economic order quantity procurement in excess of \$20 million in any one year of the contract (see 10 U.S.C. 2306b(l)(1)(B)(i)(I) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts);

(iii) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (see 10 U.S.C. 2306b(l)(1)(B)(ii) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts); or

(iv) Include a cancellation ceiling in excess of \$125 million (see 10 U.S.C. 2306c(d)(4) and 10 U.S.C. 2306b(g)(1)).

* * * * *

217.171 [Amended]

4. Amend section 217.171 by—

- a. In paragraph (a) introductory text, removing "(10 U.S.C. 2306c)" and adding "(10 U.S.C. 2306c(a))" in its place;
b. In paragraph (a)(5)(iii), adding "(10 U.S.C. 2306c(b))" at the end of the sentence, before the period;
c. In paragraph (b)(3), adding "(10 U.S.C. 2306c(c))" at the end of the sentence, before the period.
d. In paragraph (c)(3), adding "(10 U.S.C. 2306c(a))" at the end of the sentence, before the period; and
e. In paragraph (d), removing "(10 U.S.C. 2306c(c))" and adding "(10 U.S.C. 2306c(d)(2))" in its place.

5. Amend section 217.172 by—

- a. Revising paragraph (c);
b. Redesignating paragraphs (d) through (h) as paragraphs (e) through (i), respectively;
c. Adding a new paragraph (d);
d. In newly redesignated paragraph (f)(1), adding a parenthesis to close the parenthetical phrase "(when entered into or extended)" and removing "(10 U.S.C. 2306b(1)(5))" and adding "(10 U.S.C. 2306b(l)(5))" in its place;
e. In newly redesignated paragraph (f)(2)—
i. Removing "(g)(2)(i)" and adding "(h)(2)(i)" in its place;
ii. Removing "(g)(2)" and adding "(h)(2)" in its place; and
iii. Removing the parenthetical reference "(10 U.S.C. 2306b(a)(1)(7))";
f. In newly redesignated paragraph (g)(1), adding the parenthetical reference "(10 U.S.C. 2306b(h)(1))" before the semicolon;
g. In newly redesignated paragraph (g)(2)—
i. Removing "217.172(g)(3) and (4)" and adding "paragraphs (h)(3) and (4) of this section" in its place; and

ii. Adding the parenthetical reference "(10 U.S.C. 2306b(h)(2))" at the end of the first sentence, before the period;

h. In newly redesignated paragraph (h)(2) introductory text—

i. Removing "(g)(2)(i)" and adding "(h)(2)(i)" in its place; and

ii. Removing the word "are";

i. In newly redesignated paragraph (h)(2)(ii), removing "(g)(2)(i)" and adding "(h)(2)(i)" in its place;

j. In newly redesignated paragraph (h)(2)(vii)—

i. Adding the parenthetical reference "(10 U.S.C. 2306b(i)(1)(G))" at the end of the first sentence before the period, and removing the parenthetical reference "(10 U.S.C. 2306b(i)(1)(G))" from the end of the second sentence; and

ii. Removing "USD(C)(P/B)" and adding "OUSD(C)(P/B)" in its place;

k. In newly redesignated paragraph (h)(2)(viii) introductory text, removing "USD(C)(P/B)" and adding "OUSD(C)(P/B)" in its place;

l. In newly redesignated paragraph (h)(5), removing "(g)(2)" and adding "(h)(2)" in its place;

m. In newly redesignated paragraph (h)(6)—

i. Removing "(g)(2)" and adding "(h)(2)" in its place; and

ii. Removing "(g)(5)" and adding "(h)(5)" in its place;

n. In newly redesignated paragraph (h)(8) introductory text, removing the parenthetical reference "(10 U.S.C. 2306b(i)(2))"; and

o. Adding a new paragraph (j).

The revisions and additions read as follows:

217.172 Multiyear contracts for supplies.

* * * * *

(c) Multiyear contracts in amounts exceeding \$500 million must be specifically authorized by law in an act other than an appropriations act (10 U.S.C. 2306b(i)(3)).

(d) The head of the agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed \$500 million unless authority for the contract is specifically provided in an appropriations act (10 U.S.C. 2306b(l)(3)).

* * * * *

(j) Any requests for increased funding or reprogramming for procurement of a major system under a multiyear contract shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the

Secretary of Defense under 217.172(h)(2) (10 U.S.C. 2306b(m)).

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

RIN 0750-A146

Defense Federal Acquisition Regulation Supplement: Appendix F—Energy Receiving Reports (DFARS Case 2014-D024)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to identify the Wide Area WorkFlow Energy Receiving Report as the electronic equivalent of the DD Form 250, Material Inspection and Receiving Report, for overland shipments and the DD Form 250-1, Tanker/Barge Material Inspection And Receiving Report, for waterborne shipments.

DATES: Effective May 26, 2015.

FOR FURTHER INFORMATION CONTACT: Jennifer Johnson, telephone 571-372-6176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 79 FR 73539 on December 11, 2014, to amend Appendix F of the DFARS to identify the Wide Area WorkFlow (WAWF) Energy Receiving Report as the electronic equivalent of the paper DD Form 250 for overland shipments and the DD Form 250-1 for waterborne shipments. DFARS 232.7002, Policy, requires contractors to submit payment and receiving reports in electronic form, and the accepted electronic form identified in DFARS 232.7003, Procedures, is WAWF. In addition, the clause at DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports, requires payment requests and receiving reports using WAWF in nearly all cases.

II. Discussion and Analysis

There were no public comments submitted in response to the proposed

rule. No changes have been made from the proposed rule.

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 not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) Appendix F to identify the Wide Area WorkFlow (WAWF) Energy Receiving Report as the electronic equivalent of the DD Form 250, Material Inspection and Receiving Report, for overland shipments and the DD Form 250-1, Tanker/Barge Material Inspection and Receiving Report, for waterborne shipments.

DFARS 232.7002, Policy, requires contractors to submit payment and receiving reports in electronic form, and the accepted electronic form is WAWF. DFARS 232.7003, Procedures, identifies WAWF as the accepted electronic form. In addition, the clause at DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports, requires payment requests and receiving reports using WAWF in nearly all cases.

No comments were received from the public regarding the initial regulatory flexibility analysis.

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.* The rule affects all DoD contractors who are not exempt from using WAWF. Exempt classes of contracts are those that are listed under the seven categories of contracts at DFARS 232.7002, Policy.

The projected recordkeeping is limited to that required to properly record shipping and receiving

information under Government contracts. Preparation of these records requires clerical and analytical skills to create the documents and input them into the electronic WAWF system.

There is no significant economic impact on small entities.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35). However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0248, entitled Material Inspection and Receiving Report.

List of Subjects in 48 CFR Appendix F to Chapter 2

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR chapter 2, subchapter I, is amended in appendix F as follows:

CHAPTER 2—DEFENSE ACQUISITION REGULATIONS SYSTEM, DEPARTMENT OF DEFENSE

■ 1. The authority citation for appendix F to chapter 2 continues to read as follows:

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

- 2. Amend appendix F to chapter 2 by:
- a. In section F-101, revising paragraph (a) and the first sentence of paragraph (b);
 - b. In section F-103, revising paragraph (d) introductory text;
 - c. In section F-104, revising paragraph (b) introductory text;
 - d. Revising the part 3 heading; and
 - e. In section F-301, revising paragraph (b)(13).

The revisions read as follows:

Appendix F to Chapter 2—Material Inspection and Inspection and Receiving Report

* * * * *

Part 1—Introduction

F-101 General.

(a) This appendix contains procedures and instructions for the use, preparation, and distribution of the Wide Area WorkFlow (WAWF) Receiving Report, the WAWF Energy RR, and commercial shipping/packing lists used to document Government contract quality assurance. The WAWF RR is the electronic equivalent of the DD Form 250, Material Inspection and Receiving Report