

## V. Ordering Clauses

16. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i)–4(j), 5, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 155, 251, 303(r), this Order approving the North American Numbering Council's recommendation to revise the "Cancel Flows" in the Local Number Portability Provisioning Flows, WC Docket No. 07–244, CC Docket Nos. 95–116 and 99–200, *is adopted*.

17. *It is further ordered* that, pursuant to sections 1, 4(i)–4(j), 5, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 155, 251, 303(r), this Order approving the North American Numbering Council's recommendation to revise the "Disconnect Process for Ported Telephone Numbers" in the Local Number Portability Provisioning Flows, WC Docket No. 07–244, CC Docket Nos. 95–116 and 99–200, *is adopted*.

18. *It is further ordered* that, pursuant to sections 1, 4(i)–4(j), 5, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 155, 251, 303(r), this Order approving the North American Numbering Council's recommendation to accept Best Practice 65 and the corresponding revisions to the Local Number Portability Provisioning flows, and denying the North American Numbering Council's recommendation to accept Best Practice 30, WC Docket No. 07–244, CC Docket Nos. 95–116 and 99–200, *is adopted*.

19. *It is further ordered* that this Order shall become effective 30 days after publication in the **Federal Register**.

Federal Communications Commission.

**Sanford S. Williams,**

*Assistant Chief, Competition Policy Division,  
Wireline Competition Bureau.*

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**BILLING CODE 6712–01–P**

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 216

RIN 0750–A156

#### Defense Federal Acquisition Regulation Supplement: Approval Threshold for Time-and-Materials and Labor-Hour Contracts (DFARS Case 2014–D020)

**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 establish the level of approval required for a determination and findings for time-and-materials and labor-hour contracts, or portions of contracts, exceeding \$1 million.

**DATES:** Effective May 26, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Johnson, telephone 571–372–6176.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is issuing a final rule amending the DFARS to establish the level of approval required for a determination and findings (D&F) for time-and-materials and labor-hour contracts, or portions of contracts, exceeding \$1 million. The D&F must address why cost-plus-fixed-fee and other contract types are not appropriate. The approval requirements in this rule do not apply to contracts that support contingency or peacekeeping operations, or that provide humanitarian assistance, disaster relief, or recovery from conventional, nuclear, biological, chemical, or radiological attack.

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

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it pertains to requirements for internal documentation within DoD, specifically, determination and findings for use of the time-and-materials and labor-hour contract types. These requirements affect only the internal operating procedures of the Government. This final rule is not required to be published for public comment, because it has no effect beyond the internal operating procedures of DoD, and has no cost or

administrative impact on contractors or offerors.

##### 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

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

##### 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 216

Government procurement.

**Amy G. Williams,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 216 is amended as follows:

#### PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 216 continues to read as follows:

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

■ 2. Section 216.601 is amended by revising paragraph (d) to read as follows:

##### 216.601 Time-and-materials contracts.

(d) *Limitations.*

(i)(A) *Approval of determination and findings for time-and-materials or labor-hour contracts.*

(1) *Base period plus any option periods is three years or less.*

(i) 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 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.