

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: June 14, 2005.

David I. Maurstad,

*Acting Director, Mitigation Division,
Emergency Preparedness and Response
Directorate.*

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 42

[FAR Case 2004-012]

RIN: 9000-AK20

Federal Acquisition Regulation; Past Performance Evaluation of Orders

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to require past performance evaluation of certain orders, and to ensure that subcontracting management is addressed during evaluation of a contractor's past performance.

DATES: Interested parties should submit comments in writing on or before August 22, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2004-012 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

- E-mail: farcase.2004-012@gsa.gov. Include FAR case 2004-012 in the subject line of the message.

- Fax: 202-501-4067.

- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2004-012 in all correspondence related to this case. All

comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501-4082. Please cite FAR case 2004-012.

SUPPLEMENTARY INFORMATION:

A. Background

Currently, there is no FAR Part 42 requirement to evaluate a contractor's subcontract management efforts in performing under Government contracts. This proposed amendment will ensure that the acquisition community considers a prime contractor's management of subcontracts, including management of small business subcontracting plan goals, as part of the overall assessment of performance on contracts and orders. The effect of this amendment is that subcontract management efforts will be recorded for use in past performance evaluations during source selection.

This proposed amendment will add a requirement for contracting officers to evaluate a contractor's management of subcontracts, including meeting the goals in its small business subcontracting plans, and evaluate past performance on—

- Orders exceeding \$100,000 placed against a Federal Supply Schedule contract or a task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract);

- Single agency task-order and delivery-order contracts over \$100,000 when such evaluations would produce more useful past performance information for source selection than in the overall contract evaluation.

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

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely enhances clarity of current agency business practices. An Initial

Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 42 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004-012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 42

Government procurement.

Dated: June 15, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 42 as set forth below:

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for 48 CFR part 42 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

42.1501 [Amended]

2. Amend section 42.1501, in the second sentence, by adding after the word "satisfaction;" the phrase "the contractor's management of subcontracts, including meeting the goals in its subcontracting plans;"

3. Revise section 42.1502 to read as follows:

42.1502 Policy.

(a) Except as provided in paragraph (d) of this section, agencies shall prepare an evaluation of contractor performance at the time the work under the contract or order is completed—

(1) For each contract in excess of \$100,000;

(2) For each order in excess of \$100,000 placed against a Federal Supply Schedule contract or a task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract); and

(3) For single agency task order and delivery order contracts, the contracting officer may require performance evaluations for each order in excess of \$100,000 when such evaluations would

produce more useful past performance information for source selection officials than that contained in the overall contract evaluation (e.g., when the scope of the basic contract is very broad and the nature of individual orders could be significantly different).

(b) Interim evaluations should be prepared as specified by the agencies to provide current information for source selection purposes, for contracts or orders with a period of performance, including options, exceeding one year.

(c) The evaluation of contractor performance is generally for the entity, division, or unit that performed the contract or order. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements. These procedures shall require an assessment of contractor performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219-9, Small Business Subcontracting Plan.

(d) Agencies shall not evaluate performance for contracts awarded under Subpart 8.7. Agencies shall evaluate construction contractor performance and architect/engineer contractor performance in accordance with 36.201 and 36.604, respectively.

4. Amend section 42.1503 by revising paragraph (a); and removing from paragraph (e) the word "contract". The revised text reads as follows:

42.1503 Procedures.

(a) Agency procedures for past performance evaluations will generally include input from the technical office, contracting office and, where appropriate, end users of the product or service.

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DEPARTMENT OF DEFENSE

48 CFR Parts 211 and 252

[DFARS Case 2003-D073]

Defense Federal Acquisition Regulation Supplement; Describing Agency Needs

AGENCY: 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

update text on the use of specifications, standards, and data item descriptions in solicitations and contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 22, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D073, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2003-D073 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602-0326.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes—

- Update references to the DoD 5000 series publications and the DoD

database for specifications, standards, and data item descriptions; and

- Delete procedures for use of specifications, standards, and data item descriptions and for use of Single Process Initiative processes instead of military or Federal specifications and standards. Text on these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information, available at <http://www.acq.osd.mil/dpap/dars/pgi>.

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 makes no significant change to DoD policy for the use of requirements documents in solicitations and contracts. 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 subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D073.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that 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 211 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 211 and 252 as follows:

PART 211—DESCRIBING AGENCY NEEDS

1. The authority citation for 48 CFR Parts 211 and 252 continues to read as follows:

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

2. Section 211.002 is revised to read as follows:

211.002 Policy.

All defense technology and acquisition programs in DoD are subject