

216.203-4 Contract clauses.

(1) Generally, use the clauses at FAR 52.216-2, Economic Price Adjustment—Standard Supplies, FAR 52.216-3, Economic Price Adjustment—Semistandard Supplies, and FAR 52.216-4, Economic Price Adjustment—Labor and Material, only when—

(i) The total contract price exceeds the simplified acquisition threshold; and

(ii) Delivery or performance will not be completed within 6 months after contract award.

(2) Follow the procedures at PGI 216.203-4 when using an economic price adjustment clause based on cost indexes of labor or material.

5. Section 216.306 is amended by revising paragraph (c)(ii) to read as follows:

216.306 Cost-plus-fixed-fee contracts.

(c) * * *

(ii) The prohibition in paragraph (c)(i) of this section does not apply to contracts specifically approved in writing, setting forth the reasons therefor, in accordance with the following:

(A) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(B) The Secretary of Defense or designee must approve such contracts that are not for environmental work only or are for environmental work classified as construction.

6. Sections 216.402-2 through 216.403-2 are revised to read as follows:

216.402-2 Technical performance incentives.

See PGI 216.402-2 for guidance on establishing performance incentives.

216.403 Fixed-price incentive contracts.**216.403-2 Fixed-price incentive (successive targets) contracts.**

See PGI 216.403-2 for guidance on the use of fixed-price incentive (successive targets) contracts.

216.404 [Removed]

7. Section 216.404 is removed.

8. Section 216.405-1 is revised to read as follows:

216.405-1 Cost-plus-incentive-fee contracts.

See PGI 216.405-1 for guidance on the use of cost-plus-incentive-fee contracts.

9. Section 216.405-2 is revised to read as follows:

216.405-2 Cost-plus-award-fee contracts.

(b) *Application.* The cost-plus-award-fee (CPAF) contract may include provisional award fee payments. A provisional award fee payment is a payment made within an evaluation period prior to a final evaluation for that period. The contracting officer may include provisional award fee payments in a CPAF contract on a case-by-case basis, provided those payments—

(i) Are made no more frequently than monthly;

(ii) Are limited to no more than—

(A) For the initial award fee evaluation period, 50 percent of the award fee available for that period; and

(B) For subsequent award fee evaluation periods, 80 percent of the evaluation score for the prior evaluation period times the award fee available for the current period, e.g., if the contractor received 90 percent of the award fee available for the prior evaluation period, provisional payments for the current period shall not exceed 72 percent (90 percent $\times$ 80 percent) of the award fee available for the current period;

(iii) Are superseded by an interim or final award fee evaluation for the applicable evaluation period. If provisional payments have exceeded the payment determined by the evaluation score for the applicable period, the contracting officer shall collect the debt in accordance with FAR 32.606; and

(iv) May be discontinued, or reduced in such amounts deemed appropriate by the contracting officer, when the contracting officer determines that the contractor will not achieve a level of performance commensurate with the provisional payment. The contracting officer shall notify the contractor in writing of any discontinuance or reduction in provisional award fee payments.

(c) *Limitations.*

(i) The CPAF contract shall not be used—

(A) To avoid—

(1) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(2) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(1) It is more advantageous; and

(2) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(iii) The base fee shall not exceed 3 percent of the estimated cost of the contract exclusive of the fee.

(S-70) See PGI 216.405-2 for guidance on the use of CPAF contracts.

10. Section 216.470 is revised to read as follows:

216.470 Other applications of award fees.

See PGI 216.470 for guidance on other applications of award fees.

11. Section 216.703 is revised to read as follows:

216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed 5 years.

(d) *Orders.* Follow the procedures at PGI 216.703(d) for issuing orders under basic ordering agreements.

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DEPARTMENT OF DEFENSE**48 CFR Parts 217 and 252**

[DFARS Case 2003-D079]

Defense Federal Acquisition Regulation Supplement; Special Contracting Methods

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 special contracting methods. 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 November 15, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D079, 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–D079 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/dars/dfars/transformation/index.htm>.

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

- Clarify text on the use of option clauses for industrial capability production planning;
- Delete unnecessary text on determinations for interagency acquisitions under the Economy Act;
- Delete restrictive requirements relating to the use of master agreements for vessel repair;
- Delete obsolete procedures for acquisition of bakery and dairy products;
- Lower the level for approval of profit on undefinitized contract actions for which substantial performance has been completed; and
- Delete guidance on the use of options; and procedures for preparation of master agreements and job orders, for breakout and acquisition of spare parts, and for acquisition of work over and above contract requirements. Text on

these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is 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 updates, streamlines, and clarifies DFARS requirements, but makes no significant change to DoD contracting policy. 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–D079.

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 217 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 217 and 252 as follows:

1. The authority citation for 48 CFR Parts 217 and 252 continues to read as follows:

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

PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.202 is revised to read as follows:

217.202 Use of options.

See PGI 217.202 for guidance on the use of options.

217.208 [Amended]

3. Section 217.208 is amended in the first sentence by revising the parenthetical to read “(10 U.S.C. 2305(a)(5))”.

4. Section 217.208–70 is amended by revising paragraph (b) introductory text and paragraph (b)(1) to read as follows:

217.208–70 Additional clauses.

* * * * *

(b) When a surge option is needed in support of industrial capability production planning, use the clause at 252.217–7001, Surge Option, in solicitations and contracts.

(1) Insert the percentage of increase the option represents in paragraph (a) of the clause to ensure adequate quantities are available to meet item requirements.

* * * * *

217.503 [Removed]

5. Section 217.503 is removed.

6. Sections 217.7103 and 217.7103–1 are revised to read as follows:

217.7103 Master agreements and job orders.

217.7103–1 Content and format of master agreements.

Follow the procedures at PGI 217.7103–1 for preparation of master agreements.

7. Section 217.7103–3 is amended by revising paragraph (b) and removing paragraphs (c) through (f). The revised text reads as follows:

217.7103–3 Solicitations for job orders.

* * * * *

(b) Follow the procedures at PGI 217.7103–3 when preparing solicitations for job orders.

217.7103–4 [Removed]

8. Section 217.7103–4 is removed.

217.7103–5 through 217.7103–7 [Redesignated]

9. Sections 217.7103–5 through 217.7103–7 are redesignated as sections 217.7103–4 through 217.7103–6, respectively.

10. Newly designated section 217.7103–4 is amended by revising paragraph (b) and removing paragraph (c). The revised text reads as follows:

217.7103–4 Emergency work.

* * * * *

(b) Follow the procedures at PGI 217.7103–4 when processing this type of undefinitized contract action.

11. Newly designated section 217.7103–5 is revised to read as follows:

217.7103–5 Repair costs not readily ascertainable.

Follow the procedures at PGI 217.7103–5 if the nature of any repairs is such that their extent and probable cost cannot be ascertained readily.

Subpart 217.72 [Removed and Reserved]

12. Subpart 217.72 is removed and reserved.

13. Section 217.7404–5 is amended by revising paragraphs (b)(1) and (2) to read as follows:

217.7404–5 Exceptions.

* * * * *

(b) * * *

(1) A contingency operation; or
(2) A humanitarian or peacekeeping operation.

217.7404–6 [Amended]

14. Section 217.7404–6 is amended in the introductory text by removing “agency” and adding in its place “contracting activity”.

217.7405 [Removed]

15. Section 217.7405 is removed.

217.7406 [Redesignated]

16. Section 217.7406 is redesignated as section 217.7405.

17. Section 217.7500 is amended by removing the parenthetical “(as defined in appendix E)”.

217.7501 through 217.7504 [Redesignated]

18. Sections 217.7501 through 217.7504 are redesignated as sections 217.7502 through 217.7505, respectively.

19. A new section 217.7501 is added to read as follows:

217.7501 Definition.

Replenishment parts, as used in this subpart, means repairable or consumable parts acquired after the initial provisioning process.

217.7502 [Amended]

20. Newly designated section 217.7502 is amended as follows:

a. In paragraph (b)(1) by removing “217.7503” and adding in its place “PGI 217.7504”; and

b. In paragraph (c) by removing “217.7504” and adding in its place “217.7505”.

21. Newly designated sections 217.7503 and 217.7504 are revised to read as follows:

217.7503 Spares acquisition integrated with production.

Follow the procedures at PGI 217.7503 for acquiring spare parts concurrently with the end item.

217.7504 Acquisition of parts when data is not available.

Follow the procedures at PGI 217.7504 when acquiring parts for which the Government does not have the necessary data.

22. Section 217.7506 is added to read as follows:

217.7506 Spare parts breakout program.

See PGI 217.7506 and DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, Chapter 8, Section C8.3, for spare parts breakout requirements.

217.7600 [Removed]

23. Section 217.7600 is removed.

24. Section 217.7601 is revised to read as follows:

217.7601 Provisioning.

(a) Follow the procedures at PGI 217.7601 for contracts with provisioning requirements.

(b) For technical requirements of provisioning, see DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, Chapter 2, Section C2.2.

217.7602 through 217.7603–3 [Removed]

25. Sections 217.7602 through 217.7603–3 are removed.

217.7700 [Removed]

26. Section 217.7700 is removed.

27. Section 217.7701 is revised to read as follows:

217.7701 Procedures.

Follow the procedures at PGI 217.7701 when acquiring over and above work.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.217–7004 [Amended]**

28. Section 252.217–7004 is amended as follows:

a. By revising the clause date to read “(XXX 2005)”; and

b. In paragraph (a), in the first sentence, by removing “in accordance with FAR part 14 or 15, as applicable”.

252.217–7017 through 252.217–7025 [Removed and Reserved]

29. Sections 252.217–7017 through 252.217–7025 are removed and reserved.

252.217–7027 [Amended]

30. Section 252.217–7027 is amended in the introductory text by removing “217.7406” and adding in its place “217.7405”.

Appendix E to Chapter 2 [Removed and Reserved]

31. Appendix E to Chapter 2 is removed and reserved.

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DEPARTMENT OF DEFENSE**48 CFR Part 239**

[DFARS Case 2003–D094]

Defense Federal Acquisition Regulation Supplement; Exchange or Sale of Government-Owned Information Technology

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 delete obsolete procedures for the exchange or sale of Government-owned information technology. 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 November 15, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D094, 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–D094 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Gabrielle Ward, 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. Gabrielle Ward, (703) 602–2022.

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