

PART 232—CONTRACT FINANCING

2. Section 232.501–1 is revised to read as follows:

232.501–1 Customary progress payment rates.

(a) The customary progress payment rates for DoD contracts, including contracts that contain foreign military sales (FMS) requirements, are 80 percent for large business concerns, 90 percent for small business concerns, and 95 percent for small disadvantaged business concerns.

3. Section 232.502–4–70 is amended by revising paragraph (b) to read as follows:

232.502–4–70 Additional clauses.

* * * * *

(b) Use the clause at 252.232–7004, DoD Progress Payment Rates, instead of Alternate I of the clause at FAR 52.232–16, if the contractor is a small business or small disadvantaged business concern.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.232–7004 is revised to read as follows:

252.232–7004 DoD Progress Payment Rates.

As prescribed in 232.502–4–70(b), use the following clause:

DOD Progress Payment Rates (Oct. 2001)

(a) If the contractor is a small business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefined Contract Actions*) to 90 percent.

(b) If the contractor is a small disadvantaged business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefined Contract Actions*) to 95 percent.
(End of clause)

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DEPARTMENT OF DEFENSE**48 CFR Parts 243, 248, and 252**

[DFARS Case 2001–D001]

Defense Federal Acquisition Regulation Supplement; Cancellation of MIL–STD–973, Configuration Management

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove references to a cancelled military standard that prescribed a format for preparation of engineering change proposals.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2001–D001.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule removes the clauses at DFARS 252.243–7000, Engineering Change Proposals, and 252.248–7000, Preparation of Value Engineering Change Proposals, and the corresponding clause prescriptions at DFARS 243.205–70 and 248.270. DoD used these clauses to require submission of engineering change proposals in the format prescribed by MIL–STD–973, Configuration Management. MIS–STD–973 was cancelled without replacement on September 20, 2000. Therefore, this final rule removes the clauses that were based on the requirements of MIL–STD–973. General policy regarding engineering change proposals is removed from DFARS 243.205–70 to a more appropriate location at 243.204–71.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2001–D001.

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 243, 248, and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 243, 248, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 243, 248, and 252 continues to read as follows:

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

PART 243—CONTRACT MODIFICATIONS

2. Section 243.204–71 is added to read as follows:

243.204–71 Engineering change proposals.

Engineering changes can originate with either the contractor or the Government. In either case, the Government will need detailed information from the contractor for evaluation of the technical, cost, and schedule effects of implementing the change.

243.205–70 [Removed]

3. Section 243.205–70 is removed.

243.205–71 [Redesignated as 243.205–70]

4. Section 243.205–71 is redesignated as 243.205–70.

243.205–72 [Redesignated as 243.205–71]

5. Section 243.205–72 is redesignated as 243.205–71.

PART 248—[REMOVED]

6. Part 248 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.243–7000 [Removed and Reserved]**

7. Section 252.243–7000 is removed and reserved.

252.243–7001 [Amended]

8. Section 252.243–7001 is amended in the introductory text by removing “243.205–71” and adding in its place “243.205–70”.

252.243–7002 [Amended]

9. Section 252.243–7002 is amended in the introductory text by removing “243.205–72” and adding in its place “243.205–71”.

252.243-7000 [Removed]

10. Section 252.243-7000 is removed.

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DEPARTMENT OF AGRICULTURE**Office of Procurement and Property Management****48 CFR Part 442**

[AGAR Case 99-02]

RIN 0599-AA08

Agriculture Acquisition Regulation; Designation and Mandatory Use of Contractor Performance System

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Department of Agriculture's (USDA) Agriculture Acquisition Regulation (AGAR) to establish the National Institutes of Health (NIH) Contractor Performance System as the single USDA-wide automated performance evaluation system. AGAR regulations are amended to identify that system and specify its mandatory use.

DATES: This rule is effective November 30, 2001.

FOR FURTHER INFORMATION CONTACT: Patrice K. Honda, (202) 720-8924.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Procedural Requirements
 - A. Executive Orders Nos. 12866 and 12988
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Small Business Regulatory Enforcement Fairness Act
 - E. Unfunded Mandates Reform Act
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) where further implementation is needed, and supplements the FAR where coverage is needed for subject matter not covered by the FAR. AGAR section 442.1502 currently provides that the heads of the contracting activities are responsible for establishing past performance evaluation procedures and systems as required by FAR sections 42.1502 and 42.1503. USDA has identified a single automated performance evaluation system (the National Institutes of Health Contractor Performance System

(hereinafter "NIH CPS")) to be used USDA-wide and this rule modifies AGAR section 442.1502 to identify that system and specify its mandatory use by all USDA contracting activities.

In a Notice of Proposed Rulemaking (65 FR 54986, September 12, 2000), USDA announced that this proposed amendment to the AGAR was available for public review and comment during a 60 day comment period. One commenter, an employee of Department of Agriculture, submitted comments to USDA on the proposed rule. The commenter objected to USDA making the NIH CPS system mandatory. The commenter objected that the system was lengthy, complicated, cumbersome, costly, not user-friendly, and that local training was not provided. The commenter suggested that USDA develop its own system. While the employee's agency declined to support the position of the commenter, we have considered the comment as from an individual. After careful consideration, USDA has determined not to change the proposed rule. The NIH CPS provides a single uniform system for evaluating contractor performance, and because of the number of Federal agencies using the system, it has a very broad database available for such evaluations. Design and development of a USDA system would be costly and would not provide the broad database of information afforded by the NIH. In this rulemaking document, USDA is finalizing the proposed amendment to the AGAR.

II. Procedural Requirements**A. Executive Orders Nos. 12866 and 12988**

USDA prepared a work plan for this regulation and submitted it to the Office of Management and Budget (OMB) pursuant to Executive Order No. 12866. OMB determined that the rule was not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by OMB. USDA has reviewed this rule in accordance with Executive Order No. 12988, Civil Justice Reform. The rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Regulatory Flexibility Act

USDA reviewed this rule under the Regulatory Flexibility Act, 5 U.S.C. 601-611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. USDA certifies that this rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no

regulatory flexibility analysis has been prepared. USDA solicited comments from small entities concerning parts affected by the rule in the Notice of Proposed Rulemaking publicizing the proposed rule for comment (65 FR 54986, September 12, 2000). No comments from small entities were received.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly no OMB clearance is required by the Paperwork Reduction Act, 44 U.S.C. Chapter 35 or OMB's implementing regulations at 5 CFR part 1320.

D. Small Business Regulatory Enforcement Fairness Act

A report on this rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801-808. This rule is not a major rule for purposes of the Act.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. USDA has determined that this rule does not contain a Federal mandate. USDA has also determined that this rule would not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of Title II of UMRA.

F. Executive Order 13132: Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), imposes requirements in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

USDA has determined that this rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The