

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule amendments on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed rule amendments will not impose any new requirements on small entities, and, therefore, will have no significant adverse economic impact on subject small entities. The Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 16, 2008.

Stephen L. Johnson,
Administrator.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

RIN 0750-AF90

Defense Federal Acquisition Regulation Supplement; Limitations on DoD Non-Commercial Time-and-Materials Contracts (DFARS Case 2007-D021)

AGENCY: Defense Acquisition Regulations System, 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 address review and documentation requirements with regard to the use of time-and-materials contracts for the acquisition of non-commercial services. The proposed rule provides for the same level of review for both commercial and non-commercial DoD time-and-materials contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 23, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007-D021, using any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

E-mail: dfars@osd.mil. Include DFARS Case 2007-D021 in the subject line of the message.

Fax: 703-602-7887.

Mail: Defense Acquisition Regulations System, Attn: Ms. Sandra Morris, OUSD (AT&L) DPAP (CPF), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Morris, 703-602-0296.

SUPPLEMENTARY INFORMATION:

A. Background

Section 16.601(d) of the Federal Acquisition Regulation (FAR) requires that, before using a time-and-materials contract, the contracting officer must prepare a determination and findings that no other contract type is suitable. For time-and-materials contracts for commercial services, FAR 12.207(b)(2) specifies the minimum content for the determination and findings, and FAR 12.207(c) contains additional requirements with regard to the use of indefinite-delivery contracts priced on a time-and-materials basis.

To provide for the same level of oversight in the award of all DoD time-and-materials contracts, this proposed rule amends DFARS 216.601 to establish determination and findings requirements for DoD non-commercial

time-and-materials contracts, similar to those presently required by FAR 12.207 for commercial services contracts.

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 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 proposed rule relates to internal DoD review and documentation requirements with regard to the selection of contract type. 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 subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2007-D021.

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 Part 216

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 216 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. 421 and 48 CFR Chapter 1.

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

216.601 Time-and-materials contracts.

(d) *Limitations.*

(i) 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—

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

(B) 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;

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

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

(ii) For indefinite-delivery contracts, the contracting officer shall—

(A) Structure contracts that authorize time-and-materials orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis, to the maximum extent practicable; and

(B) Execute the determination and findings for—

(1) Each order placed on a time-and-materials basis if the indefinite-delivery contract also authorizes orders on a cost-reimbursement, incentive, or fixed-price basis; or

(2) The basic contract if the indefinite-delivery contract only authorizes time-and-materials orders. The determination and findings shall—

(i) Contain sufficient facts and rationale to justify why orders on a cost-reimbursement, incentive, and fixed-price basis are not practicable; and

(ii) Be approved one level above the contracting officer.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 246, 252 and Chapter 2

RIN 0750-AF88

Defense Federal Acquisition Regulation Supplement; Quality Assurance Authorization of Shipment of Supplies (DFARS Case 2005-D024)

AGENCY: Defense Acquisition Regulations System, 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 revise the criteria under which the contract administration office may permit a contractor to release supplies for shipment without Government authorization of the shipping

documents. The proposed changes will enable the Government to provide for the appropriate level of contract quality assurance at source, based on product complexity and criticality and the contractor's record of quality control.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 23, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005-D024, using any of the following methods:

○ *Federal eRulemaking Portal:*

<http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *E-mail:* dfars@osd.mil. Include

DFARS Case 2005-D024 in the subject line of the message.

○ *Fax:* 703-602-7887.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703-602-0302.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS 246.471 to provide for contractor release of supplies for shipment, without Government authorization of the shipping documents, based on criteria that consider product complexity and criticality and the contractor's record of quality control.

In addition, changes are proposed to DD Form 250, Material Inspection and Receiving Report. Since DoD forms are not published in the **Federal Register** or the Code of Federal Regulations, the proposed changes to DD Form 250 do not appear in the amendatory portion of this proposed rule, but are described as follows: The statements in Blocks 21a and 21b (Contract Quality Assurance) of DD Form 250 are proposed to be changed, from "CQA/ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents", to "CQA/ACCEPTANCE has been subject to Government contract quality assurance surveillance". The proposed changes provide for the representative signing the DD Form 250 at source to affirm that

the appropriate quality assurance activities have been accomplished. The clause at DFARS 252.246-7000, Material Inspection and Receiving Report, is amended to specify that a contractor's submission of a receiving report constitutes the contractor's affirmation that the items listed on the report conform to contract requirements.

The existing DD Form 250 is available at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.

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 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 proposed rule primarily relates to the allocation of Government resources to quality assurance functions. 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 2005-D024.

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 246 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 246 and 252 and Appendix F to Chapter 2 as follows:

1. The authority citation for 48 CFR parts 246 and 252 and Appendix F to subchapter I continues to read as follows:

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

PART 246—QUALITY ASSURANCE

2. Section 246.471 is amended as follows:

- a. By removing paragraph (a)(4); and
- b. By revising paragraph (b) heading and paragraph (b)(1) to read as follows: