

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 216**

RIN 0750-AF81

Defense Federal Acquisition Regulation Supplement; Letter Contract Definition Schedule (DFARS Case 2007-D011)

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 clarify requirements regarding definitization of letter contracts. The rule specifies that DoD letter contracts will be definitized using the DFARS procedures applicable to all other undefinitized contract actions.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 14, 2009, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007-D011, 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-D011 in the subject line of the message.

Fax: 703-602-7887.

Mail: Defense Acquisition Regulations System, Attn: Ms. Cassandra Freeman, OUSD (AT&L) DPAP (DARS), 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. Cassandra Freeman, 703-602-8383.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 16.603 of the Federal Acquisition Regulation (FAR) permits the use of a letter contract as a preliminary, undefinitized contractual instrument, when negotiating a definitive contract is not possible in sufficient time to meet the Government's requirements. FAR 16.603-2(c)(3) requires the definitization of a letter contract within 180 days after the date of the letter contract, or before completion of 40 percent of the work to be performed, whichever occurs first. In extreme cases and according to agency procedures, the contracting officer may authorize an additional period.

DFARS Subpart 217.74 contains requirements applicable to all DoD undefinitized contract actions, consistent with 10 U.S.C. 2326. DFARS 217.7404-3(a) requires definitization of such actions by 180 days after issuance of the action (this date may be extended but may not exceed 180 days after the contractor submits a qualifying proposal), or the date on which the amount of funds obligated exceeds 50 percent of the not-to-exceed price, whichever is earlier. If the contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, the limitation on obligations before definitization may be increased to no more than 75 percent.

In view of the differences between the FAR and DFARS definitization requirements, confusion has arisen in this area. This proposed rule clarifies that the definitization requirements at DFARS 217.7404-3(a) apply to DoD letter contracts instead of the requirements at FAR 16.603-2(c)(3). This approach provides consistency in the manner in which DoD manages its undefinitized contract actions, and is in line with the specific provisions of 10 U.S.C. 2326 relating to DoD use of undefinitized contract actions.

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 is a clarification of existing requirements pertaining to undefinitized contract actions. 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-D011.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the proposed rule does not contain 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 216.603-2 is added to read as follows:

216.603-2 Application.

(c)(3) In accordance with 10 U.S.C. 2326, establish definitization schedules for letter contracts following the requirements at 217.7404-3(a) instead of the requirements at FAR 16.603-2(c)(3).

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