

the apparently inaccurate wording of § 1609.3, the matter came to LSC's attention through a question raised in the course of a compliance visit being conducted by the Corporation's Office of Compliance and Enforcement. Given the question being raised internally at LSC and the clear conflict between the regulations (1609 and 1610), LSC does not believe it would be appropriate to permit this situation to continue, particularly when there is a simple and straightforward solution to the problem.

LSC further believes that amending the regulation in this way brings the regulation into conformity with the provisions of the LSC Act (and is not inconsistent with anything in the applicable appropriations acts). Moreover, it resolves the conflict between parts 1609 and 1610 and reflects the intention of the Corporation in 1997 to refrain from making a substantive change to the previously existing (pre-1997) scope of the regulation. In addition, amending part 1609 in this way is consistent with the existing LSC guidance and practice. As noted above, the LSC Compliance Supplement to the Audit Guide guidance to auditors does not instruct them to apply the restrictions to a recipient's public non-LSC funds and to our knowledge the auditors have not been reporting instances of a recipient's use of public non-LSC funds as problematic with respect to the regulation. Further, LSC's practice has not been to apply the restriction to a recipient's public non-LSC funds. Finally, to LSC's knowledge, the general understanding and practice in the field has been that the restriction does not apply to a recipient's public non-LSC funds. This understanding was confirmed in the comments LSC received on the proposed rule. Thus, amending part 1609 to clarify that it applies as an restriction on LSC and private non-LSC funds, rather than as an entity restriction, does not create any substantive change from current practice.

In light of the above, LSC amends § 1609.3(a) to clarify that a recipient may not use Corporation funds to provide legal assistance in a fee-generating case (unless one of the exceptions apply). As 45 CFR 1610.4 is being amended, that provision will continue to subject a recipient's private funds to the fee-generating case restrictions in part 1609.

#### List of Subjects in 45 CFR Part 1609

Grant programs—law, Legal services.

For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC amends 45 CFR part 1609 as follows:

#### PART 1609—FEE-GENERATING CASES

■ 1. The authority citation for part 1609 continues to read as follows:

**Authority:** 42 U.S.C. 2996f(b)(1); 42 U.S.C. 2996e(c)(1).

■ 2. Section 1609.3 is amended by revising paragraph (a) introductory text to read as follows:

##### § 1609.3 General requirements.

(a) Except as provided in paragraph (b) of this section, a recipient may not use Corporation funds to provide legal assistance in a fee-generating case unless:

\* \* \* \* \*

**Victor M. Fortuno,**

*Vice President & General Counsel.*

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#### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Part 207

**RIN 0750-AH12**

#### Defense Federal Acquisition Regulation Supplement; Definition of Multiple-Award Contract (DFARS Case 2011-D016)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the definition of multiple-award contract.

**DATES:** *Effective Date:* April 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dustin Pitsch, 703-602-0289.

**SUPPLEMENTARY INFORMATION:**

##### I. Background

This DFARS case is amending the definition of “multiple-award contract” at DFARS 207.107-2. The revised DFARS language is correcting previous imprecision in implementing the statute. No policy or substantive changes are made. The final rule amendments are made to correct the current definition by—

—Deleting “Orders placed using” to reflect that the multiple-award contract is the basic schedule contract, and not the individual orders placed under it;

—Adding “or Department of Veterans Affairs” to correctly reflect the agencies that have statutory authority to issue schedule contracts; and  
—Adding hyphens where appropriate for unit modifiers.

DoD has issued a final rule because this change does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors. Therefore, public comment is not required in accordance with 41 U.S.C 1707.

#### II. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. 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.

#### III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and public comment is not required in accordance with 41 U.S.C. 418b(a).

#### IV. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Part 207

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 207 is amended as follows:

#### PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 207.170–2 definition of “Multiple award contract” is amended by revising paragraphs (1) and (2) to read as follows:

**207.170–2 Definitions.**

\* \* \* \* \*

*Multiple-award contract* means—

(1) A multiple-award schedule contract issued by the General Services Administration or Department of Veterans Affairs as described in FAR subpart 8.4;

(2) A multiple award task-order or delivery-order contract issued in accordance with FAR subpart 16.5; or

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 232

RIN 0750–AH19

#### Defense Federal Acquisition Regulation Supplement; Accelerate Small Business Payments (DFARS Case 2011–D008)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to accelerate payments to all small business concerns.

**DATES:** The interim rule is effective April 27, 2011. Comments on the interim rule should be submitted in writing to the address shown below on or before June 27, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments, identified by DFARS Case 2011–D008, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “DFARS Case 2011–D008” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2011–D008.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2011–D008” on your attached document.

- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2011–D008 in the subject line of the message.

- *Fax:* 703–602–0350.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Lee Renna, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail). Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lee Renna, 703–602–0764.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is amending the DFARS to accelerate payments for all small business concerns. Currently, DoD assists small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before the normal payment due dates established in the contract. This interim rule removes the term “disadvantaged” from the language at DFARS 232.903 and DFARS 232.906(a)(ii), thereby extending this payment policy uniformly to all small business concerns.

##### II. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. 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.

##### III. Regulatory Flexibility Act

DoD expects this rule to have a significant positive economic impact on all small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it extends

accelerated payments to all small business concerns. An initial regulatory flexibility analysis has been completed and is summarized as follows:

This interim rule revises DFARS 232.903 and 232.906(a)(ii) to allow accelerated payments to all small business concerns. This rule allows DoD to exercise greater flexibility offered by 5 CFR 1315.5 and FAR 32.903 which permit the use of accelerated payment procedures for small business concerns.

Analysis of the Federal Procurement Data System indicates that approximately 60,000 small businesses had active contracts in Fiscal Year 2010. It is reasonable to assume a similar number of small businesses will be positively affected by the use of accelerated payment procedures.

There are no information collection requirements associated with this rule. This rule does not duplicate, overlap, or conflict with any other Federal rules.

The desired outcome is best achieved by the implementation of the rule as stated herein and there are no other alternatives available to achieve the desired outcome. This rule is expected to have a positive impact on small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D008) in correspondence.

##### IV. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Burden Act (44 U.S.C. chapter 35).

##### V. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling circumstances exist to promulgate this interim rule without prior opportunity for public comments pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b). This action is necessary to ensure DoD implements cash flow improvements for small business firms as quickly as possible. Accelerating payments is a way to boost the financial health of small businesses. At present, the authority to accelerate payments at DFARS 232.903 and 232.906 is limited