

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Chapter 2**

[Docket DARS–2023–0037]

RIN 0750–AL84

Defense Federal Acquisition Regulation Supplement: DoD Mentor-Protégé Program (DFARS Case 2023–D011)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023 that permanently authorizes and modifies the DoD Mentor-Protégé Program.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 26, 2023 to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2023–D011, using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2023–D011. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2023–D011” on any attached documents.

- *Email:* osd.dfars@mail.mil. Include DFARS Case 2023–D011 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, 703–508–7524.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD is proposing to revise the DFARS to implement section 856 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 856 transferred section 831 of the NDAA for FY 1991 (Pub. L. 101–510; 10 U.S.C. 4901 note) to 10 U.S.C. 4902 and authorized the

DoD Mentor-Protégé Program on a permanent basis. Section 856 also extends the term for program participation and removes the term limitation for mentors to incur costs under mentor-protégé agreements entered into after December 23, 2022. Section 856 does not apply to mentor-protégé agreements entered into prior to December 23, 2022.

II. Discussion and Analysis

DoD proposes to modify DFARS subpart 219.71 and DFARS appendix I to implement section 856 of the NDAA for FY 2023, which authorizes on a permanent basis and modifies the DoD Mentor-Protégé Program (the Program). This proposed rule removes all references to “pilot” to acknowledge that the Program is no longer a temporary, pilot program. Removal of the deadline for entering into a mentor-protégé agreement is also proposed, as this deadline is no longer applicable since the program is no longer authorized on a temporary basis. This proposed rule removes the specific dates for mentor reimbursements and credit toward subcontracting goals in its small business subcontracting plan under mentor-protégé agreements entered into after December 23, 2022.

In addition, DoD proposes to implement other changes made by section 856. The dollar threshold for mentor eligibility is proposed to be changed from \$100 million to \$25 million. The program participation term is proposed to be extended from two years to three years. The proposed rule includes the addition of “manufacturing, test and evaluation” to the list of assistance that a mentor may provide to a protégé under a mentor-protégé agreement and the addition of “manufacturing innovation institutes” to the list of assistance that a mentor firm may obtain for the protégé firm under a mentor-protégé agreement.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Products (Including Commercially Available Off-the-Shelf Items), and for Commercial Services

This proposed rule amends the clause at DFARS 252.232–7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protégé Program, to remove the word “Pilot” from the clause title. However, this rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to not apply to acquisitions at

or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This proposed rule implements the permanent authorization of and statutory amendments to the DoD Mentor-Protégé Program. The purpose of the program is to provide incentives to DoD contractors to furnish eligible small business concerns with assistance designed to—

(1) Enhance the capabilities of small business concerns to perform as subcontractors and suppliers under DoD contracts and other contracts and subcontracts; and

(2) Increase the participation of small business concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts.

Therefore, this proposed rule, when finalized, will benefit small business concerns that participate in the program by extending the opportunity to enter into DoD Mentor-Protégé agreements and extending the term of the agreements. This proposed rule is also expected to benefit large entities and the Government by expanding the defense industrial base.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 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 E.O. 12866, Regulatory Planning and Review, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, 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 this proposed rule is only expected to impact a limited number of small entities that become protégés under a DoD mentor-protégé agreement. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is necessary to implement section 856 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 856 transferred section 831 of the NDAA for FY 1991 (Pub. L. 101–510; 10 U.S.C. 4901 note) to 10 U.S.C. 4902 and authorized the DoD Mentor-Protégé Program on a permanent basis. Section 856 also extends the term for program participation and removes the term limitation for mentors to incur costs under agreements entered into after December 23, 2022.

The objective of this proposed rule is to implement the permanent authorization of the DoD Mentor-Protégé Program and to make other Program changes. The legal basis for the rule is section 856 of the NDAA for FY 2023.

The number of new DoD mentor-protégé agreements entered into in FY 2021 was 50, with a total of 104 active agreements; in FY 2022, 29 new agreements were entered into, with a total of 62 active agreements; and in FY 2023, 25 new agreements were entered into, with a total of 75 active agreements. The average number of new agreements entered into during the last three fiscal years was approximately 35 per year, with an average of 80 total active agreements per fiscal year. DoD estimates 44 new agreements will be entered into in FY 2024, with a total of 81 active agreements in place. As of June 5, 2023, there are 62 unique small entities with active agreements. Since the number of small entities that will enter into new agreements is unknown, DoD cannot provide a more precise estimate of the number of small entities to which this rule will apply.

This proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD did not identify any significant alternatives to the rule that would accomplish the stated objectives of the statute and that would minimize the significant economic impact of the rule on small entities. DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities. Any impact is expected to be beneficial.

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 2023–D011), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this proposed rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0332.

List of Subjects in 48 CFR Chapter 2

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219, 232, 252, and Appendix I to Chapter 2 are proposed to be amended as follows:

- 1. The authority citation for 48 CFR parts 219, 232, 252, and Appendix I to Chapter 2 continues to read as follows:

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

PART 219—SMALL BUSINESS PROGRAMS

- 2. Revise section 219.7100 to read as follows:

219.7100 Scope.

This subpart implements the DoD Mentor-Protégé Program (referred to as the Program) authorized under 10 U.S.C. 4902. The purpose of the Program is to provide incentives for DoD contractors to assist protégé firms in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

219.7101 [Amended]

- 3. Amend section 219.7101 by removing the word “Pilot”.

219.7103–1 [Amended]

- 4. Amend section 219.7103–1 by removing the word “Pilot”.

219.7103–2 [Amended]

- 5. Amend section 219.7103–2 in paragraph (b) by removing the word “Pilot”.
- 6. Amend section 219.7104 by revising paragraphs (b) and (d) to read as follows:

219.7104 Developmental assistance costs eligible for reimbursement or credit.

(b) Before incurring any costs under the Program, mentor firms must establish the accounting treatment of developmental assistance costs eligible

for reimbursement or credit. For mentor-protégé agreements entered into prior to December 23, 2022, to be eligible for reimbursement under the Program, the mentor firm must incur the costs not later than September 30, 2026.

* * * * *

(d) For mentor-protégé agreements entered into prior to December 23, 2022, developmental assistance costs incurred by a mentor firm not later than September 30, 2026, that are eligible for crediting under the Program, may be credited toward subcontracting plan goals as set forth in appendix I. For mentor-protégé agreements entered into on or after December 23, 2022, developmental assistance costs that are eligible for crediting under the Program may be credited toward subcontracting plan goals as set forth in appendix I.

PART 232—CONTRACT FINANCING

232.412–70 [Amended]

- 7. Amend section 232.412–70 in paragraph (b) by removing the word “Pilot”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 8. Revise the clause heading, title, and date to read as follows:

252.232–7005 Reimbursement of Subcontractor Advance Payments—DoD Mentor-Protégé Program.

* * * * *

Reimbursement of Subcontractor Advance Payments—DoD Mentor-Protégé Program (Date)

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- 9. Amend appendix I to chapter 2—
 - a. By revising the appendix title;
 - b. In section I–100 by revising paragraph (a) introductory text.
 - c. In section I–102—
 - i. In paragraph (a)(3)(i) by removing “\$100” and adding “\$25” in its place;
 - ii. In paragraph (a)(3)(ii) by removing “or”; and
 - iii. By adding paragraph (a)(3)(iv).
 - d. By revising section I–103.
 - e. In section I–106—
 - i. In paragraph (d)(1)(ii) by removing “control” and adding “control, manufacturing, test and evaluation,” in its place; and
 - ii. By adding paragraph (d)(6)(vi).
 - f. In section I–107 by revising paragraph (k).
 - g. In section I–108 paragraph (a)(5) by removing “2 years” and adding “3 years” in its place.
 - h. In section I–109 paragraph (b) by removing the word “Pilot”.
 - i. In section I–111 by removing “Director, OSBP” and adding “Director,

OSBP, OUSD(A&S) or the Director, OSBP” in its place.

■ j. In section I–112.2 by removing paragraph (a)(3) and redesignating paragraph (a)(4) as (a)(3).

The revisions and additions read as follows:

Appendix I to Chapter 2—Policy and Procedures for the DoD Mentor-Protégé Program

I–100 Purpose

(a) This appendix implements the DoD Mentor-Protégé Program (referred to as the Program) authorized under 10 U.S.C. 4902. The purpose of the Program is to provide incentives to DoD contractors to furnish eligible small business concerns with assistance designed to—

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I–102 Participant Eligibility

- (a) * * *
- (3) * * *

(iv) Is otherwise capable to assist in the development of protégé firms and is approved by the Director OSBP, OUSD(A&S).
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I–103 Incentives for Mentors

Mentors incurring costs through September 30, 2026, pursuant to a mentor-protégé agreement approved prior to December 23, 2022, and mentors incurring costs pursuant to a mentor-protégé agreement approved on or after December 23, 2023, may be eligible for—

- (a) Credit toward the attainment of its applicable subcontracting goals for unreimbursed costs incurred in providing developmental assistance to its protégé firm(s);
 - (b) Reimbursement pursuant to the execution of a separately priced contract line item added to a DoD contract; or
 - (c) Reimbursement pursuant to entering into a separate DoD contract upon determination by the Director, OSBP, of the cognizant military department or defense agency that unusual circumstances justify using a separate contract.
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I–106 Development of Mentor-Protégé Agreements

* * * * *

- (d) * * *
- (6) * * *

(vi) Manufacturing innovation institutes.
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I–107 Elements of a Mentor-Protégé Agreement

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(k) A program participation term for the agreement that does not exceed 3 years. The agreement may be extended for a period not to exceed 2 years if approved by the Director, OSBP, OUSD(A&S). The Director, OSBP, of the cognizant military department or defense agency will submit requests for an extension of the agreement to the Director, OSBP, OUSD(A&S) for approval. The request will include a justification describing the unusual circumstances that warrant a term in excess of 3 years;
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