

1. Eliminate unnecessary references to fiscal years 1995, 1997, and 1998 legislation.

2. Delete text at 231.205–70(c)(1)(iv)(A) and (B) regarding business combinations that occurred on or before November 18, 1997. This text is unnecessary, because external restructurings normally must be initiated within 3 years of a business combination.

3. Delete text at 231.205–70(d), Procedures and ACO responsibilities. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A proposed rule describing the purpose and structure of PGI is published elsewhere in this issue of the **Federal Register** under DFARS Case 2003–D090, Procedures, Guidance, and Information.

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 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Act, 5 U.S.C. 601, *et seq.*, because the rule clarifies existing DFARS text or deletes DFARS text that is redundant, outdated, procedural, or internal to DoD. 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 2003–D036.

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 231

Government procurement.

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

Therefore, DoD proposes to amend 48 CFR part 231 as follows:

1. The authority citation for 48 CFR part 231 continues to read as follows:

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

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205–10 [Removed]

2. Section 231.205–10 is removed.

3. Section 231.205–22 is revised to read as follows:

231.205–22 Legislative lobbying costs.

(a) Costs associated with preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed also are unallowable (10 U.S.C. 2249).

4. Section 231.205–70 is amended by revising paragraphs (a), (c), and (d) to read as follows:

231.205–70 External restructuring costs.

(a) *Scope.* This subsection—

(1) Prescribes policies and procedures for allowing contractor external restructuring costs when savings would result for DoD; and

(2) Implements 10 U.S.C. 2325.

(c) *Limitations on cost allowability.*

(1) Restructuring costs associated with external restructuring activities shall not be allowed unless—

(i) Such costs are allowable in accordance with FAR Part 31 and DFARS Part 231;

(ii) An audit of projected restructuring costs and restructuring savings is performed;

(iii) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, and negotiates an advance agreement in accordance with paragraph (d)(8) of this subsection; and

(iv) For business combinations that occur after November 18, 1997, the Under Secretary of Defense (Acquisition, Technology, and Logistics) or the Principal Deputy determines in writing that the audited projected savings for DoD resulting from the restructuring will exceed either—

(A) The costs allowed by a factor of at least two to one; or

(B) The cost allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(2) The audit, review, certification, and determination required by paragraph (c)(1) of this subsection shall not apply to any business combination for which payments for restructuring costs were made before August 15, 1994, or for which the cognizant ACO executed an advance agreement establishing cost ceilings based on

audit/negotiation of detailed cost proposals for individual restructuring projects before August 15, 1994.

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall follow the procedures at PGI 231.205–70(d).

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DEPARTMENT OF DEFENSE

48 CFR Parts 234, 242, and 252

[DFARS Case 2003–D030]

Defense Federal Acquisition Regulation Supplement; Major Systems Acquisition

AGENCY: 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 update text pertaining to major systems acquisition, earned value management systems, and cost/schedule status reporting. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 23, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@osd.mil. Please cite DFARS Case 2003–D030 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D030.

At the end of the comment period, interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dp/dars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes include—

- Deletion of the definitions of “systems” and “systems acquisition” at DFARS 234.001, since these terms are not used within DFARS Part 234.
- Relocation of text on earned value management systems from DFARS Part 234 to Part 242, since earned value management system requirements are not limited to major systems acquisition. The earned value management system thresholds specified in DoDI 5000.2, Operation of the Defense Acquisition System, do not clearly equate to major or other than major systems. The prescriptions for the Cost/Schedule Status Report clause and provision at DFARS 252.242–7005 and 252.242–7006, respectively, also are amended to remove text that limits their use to other than major systems.
- Deletion of text at DFARS 234.005–70 regarding a requirement for the procuring contracting officer to obtain assistance from the administrative contracting officer when determining the adequacy of a proposed earned value management system plan. Text on this subject will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A proposed rule describing the purpose and structure of PGI is published elsewhere in this issue of the **Federal Register** under DFARS Case 2003–D090, Procedures, Guidance, and Information.
- Updating of references to OMB Circulars and the DoD 5000 series documents.

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 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 rule updates and relocates DFARS text, with no substantive change in policy. 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 2003–D030.

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 234, 242, and 252

Government procurement.

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

Therefore, DoD proposes to amend 48 CFR Parts 234, 242, and 252 as follows:

1. The authority citation for 48 CFR Parts 234, 242, and 252 continues to read as follows:

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

PART 234—MAJOR SYSTEM ACQUISITION

234.001 [Removed]

2. Section 234.001 is removed.
3. Section 234.003 is revised to read as follows:

234.003 Responsibilities.

DoDD 5000.1, The Defense Acquisition System, and DoDI 5000.2, Operation of the Defense Acquisition System, contain the DoD implementation of OMB Circular A–109 and OMB Circular A–11.

4. Section 234.005 is revised to read as follows:

234.005 General requirements.

See 242.1106(a) for information on the use of earned value management systems and the use of cost/schedule status reports.

234.005–70 and 234.005–71 [Removed]

5. Sections 234.005–70 and 234.005–71 are removed.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

6. Section 242.1106 is amended by revising paragraph (a) to read as follows:

242.1106 Reporting requirements.

(a) See DoDI 5000.2, Operation of the Defense Acquisition System, for reporting requirements for defense technology projects and acquisition programs. Table E3.T2. of DoDI 5000.2 specifies the earned value management system (EVMS) thresholds. When an offeror proposes an EVMS plan, follow the review procedures at PGI 242.1106(a). The Defense Acquisition Guidebook provides additional guidance on earned value management and identifies when cost/schedule status reports are applicable.

* * * * *

7. Section 242.1107–70 is revised to read as follows:

242.1107–70 Solicitation provision and contract clause.

(a) When the Government requires contractor compliance with DoD earned value management system criteria—

(1) Use the provision at 252.242–7XXX, Notice of Earned Value Management System, in solicitations; and

(2) Use the clause at 252.242–7YYY, Earned Value Management System, in solicitations and contracts.

(b) Use the clause at 252.242–7005, Cost/Schedule Status Report, in solicitations and contracts that require cost/schedule status reports (*i.e.*, when the Contract Data Requirements List includes DI–MGMT–81467).

(c) Use the provision at 252.242–7006, Cost/Schedule Status Report Plans, in solicitations that require cost/schedule status reports.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.234–7000 and 252.234–7001 [Removed]

8. Sections 252.234–7000 and 252.234–7001 are removed.

9. Sections 252.242–7XXX and 252.242–7YYY are added to read as follows:

252.242–7XXX Notice of Earned Value Management System.

As prescribed in 242.1107–70(a)(1), use the following provision:

Notice of Earned Value Management System (XXX 2004)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) has

recognized that the proposed earned value management system (EVMS) complies with the EVMS criteria of DoDI 5000.2, Operation of the Defense Acquisition System, or that the proposed cost/schedule control system has been accepted by the Department of Defense.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS criteria.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(iii) Describe the management system and its application in terms of the 32 EVMS criteria;

(iv) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the criteria. The prime contractor and the Government shall agree to subcontractors selected for application of the EVMS criteria. (End of Provision)

252.242-7YYY Earned Value Management System.

As prescribed in 242.1107-70(a)(2), use the following clause:

Earned Value Management System (XXX 2004)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in DoDI 5000.2, Operation of the Defense Acquisition System.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO as complying with EVMS criteria (or the Contractor does not have an existing cost/schedule control system that has been accepted by the Department of Defense), the Contractor shall apply the system to the contract and shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The objective of the integrated baseline review is

for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor-proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the following subcontractors to comply with the requirements of this clause:

(Contracting Officer to insert names of subcontractors selected for application of EVMS criteria in accordance with 252.242-7XXX(c).)

(End of Clause)

10. Section 252.242-7005 is amended by revising the introductory text, clause date, and paragraph (c) to read as follows:

252.242-7005 Cost/Schedule Status Report.

As prescribed in 242.1107-70(b), use the following clause:

Cost/Schedule Status Report (XXX 2004)

* * * * *

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the earned value management system criteria provided in DoDI 5000.2, Operation of the Defense Acquisition System.

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11. Section 252.242-7006 is amended by revising the introductory text, clause date, and paragraph (b) to read as follows:

252.242-7006 Cost/Schedule Status Report Plans.

As prescribed in 242.1107-70(c), use the following provision:

Cost/Schedule Status Report Plans (XXX 2004)

* * * * *

(b) If the offeror proposes to use a cost/schedule control system that has been recognized by the cognizant Administrative

Contracting Officer as complying with the earned value management system criteria of DoDI 5000.2, Operation of the Defense Acquisition System, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision. (End of Provision)

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DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 2003-D058]

Defense Federal Acquisition Regulation Supplement; Removal of Obsolete Research and Development Contracting Procedures

AGENCY: 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 delete obsolete procedures for research and development contracting. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 23, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@osd.mil. Please cite DFARS Case 2003-D058 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2003-D058.

At the end of the comment period, interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>. **FOR FURTHER INFORMATION CONTACT:** Ms. Teresa Brooks, (703) 602-0326.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS.