

proposed DFARS changes permit DoD contracting activities to assign an additional identification number to an existing contract by issuing a separate "continued" contract, when continued performance under the existing contract number is not practical for administrative reasons. The continued contract would incorporate all prices, terms, and conditions of the predecessor contract. Use of this procedure is expected to be limited, but will help to simplify administration, payment, and closeout of lengthy, complex contracts; and will help in situations where a contracting activity has exhausted its assigned series of identification numbers for orders placed against another activity's contract.

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 proposed change is administrative. A continued contract does not constitute a new procurement and will incorporate all prices, terms, and conditions of the predecessor contract. 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-D052.

### 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 204

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Part 204 as follows:

### PART 204—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR Part 204 continues to read as follows:

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

2. Section 204.7001 is revised to read as follows:

#### 204.7001 Policy.

(a) Use the uniform PII numbering system prescribed by this subpart for the solicitation/contract instruments described in 204.7003 and 204.7004.

(b) Retain the basic PII number unchanged for the life of the instrument unless the conditions in paragraph (c) of this section exist.

(c)(1) If continued performance under a contract number is not possible or is not in the Government's best interest solely for administrative reasons (e.g., when the supplementary PII serial numbering system is exhausted or for lengthy major systems contracts with multiple options), the contracting officer may assign an additional PII number by issuing a separate continued contract to permit continued contract performance.

(2) A continued contract—

(i) Does not constitute a new procurement;

(ii) Incorporates all prices, terms, and conditions of the predecessor contract effective at the time of issuance of the continued contract;

(iii) Operates as a separate contract independent of the predecessor contract once issued; and

(iv) Shall not evade competition, expand the scope of work, or extend the period of performance beyond that of the predecessor contract.

(3) When issuing a continued contract, the contracting officer shall—

(i) Issue an administrative modification to the predecessor contract to clearly state that—

(A) Any future awards provided for under the terms of the predecessor contract (e.g., issuance of orders or exercise of options) will be accomplished under the continued contract; and

(B) Supplies and services already acquired under the predecessor contract shall remain solely under that contract for purposes of Government inspection, acceptance, payment, and closeout; and

(ii) Follow the procedures at PGI 204.7001(c).

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 232

[DFARS Case 2003-D043]

### Defense Federal Acquisition Regulation Supplement; Contract Financing

**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 contract financing. 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 July 5, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D043, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003-D043 in the subject line of the message.

- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Bill Sain, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

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

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Sain, (703) 602-0293.

#### 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 impact 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/dpap/dfars/transf.htm>.

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

- Relocation of text addressing general contract financing payment issues from 232.906 to 232.007.
- Deletion of unnecessary text at 232.071 on the composition and responsibilities of the DoD Contract Finance Committee, and deletion of references to the Committee at 232.070(a) and 232.617(a).
- Deletion of text at 232.108 on financial consultation, and deletion of text at 232.207 on specifying amounts to be charged to foreign military sales accounts in approvals of financing requests. These issues are adequately addressed in the FAR.
- Deletion of text at 232.206(d) on instructions for distribution of financing payments to multiple appropriations accounts. Text on this subject was proposed for inclusion in the new DFARS companion resource, Procedures, Guidance, and Information (PGI), in the proposed rule published at 69 FR 35564 on June 25, 2004, under DFARS Case 2003–D009, Payment and Billing Instructions.
- Amendment of 232.404(a)(9) to increase, from \$500 to \$2,500, the dollar value at or below which the requirements of FAR Subpart 32.4, Advance Payments for Non-Commercial Items, do not apply to high school and college publications for military recruitment efforts.
- Clarification of text at 232.501–3(b) on limitation of the Government's liability when the contract price exceeds the funds obligated under the contract.
- Deletion of unnecessary text at 232.605(b) regarding integrated accounting at DoD installations.
- Relocation of text on payment due dates, from 232.905(1) and (2), to 232.904 and 232.906, respectively.
- Deletion of unnecessary text at 232.905(f)(6) on electronic notification to the payment office of Government acceptance and approval. Electronic submission and processing of payment requests is addressed in Subpart 232.70.
- Addition of text at 232.906(a)(i) to address the requirement for contracting officers to insert the standard due date for interim payments on cost-reimbursement contracts for services.

- Deletion of unnecessary text at 232.1007 on specifying amounts to be charged to foreign military sales accounts.
- Deletion of text at DFARS 232.1108 on mandatory use of the Governmentwide commercial purchase card. This issue is addressed in 213.270.
- Deletion of informational and procedural text at 232.070(c), 232.409–1, 232.410, 232.501–2, 232.606, 232.610, 232.670, and 232.671. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

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 provides guidance for contracting officers. 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–D043.

## 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 232

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 232 is proposed to be amended as follows:

## PART 232—CONTRACT FINANCING

1. The authority citation for 48 CFR part 232 continues to read as follows:

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

2. Section 232.007 is added to read as follows:

### 232.007 Contract financing payments.

(a) DoD policy is to make contract financing payments as quickly as

possible. Generally, the contracting officer shall insert the standard due dates of 7 days for progress payments, and 14 days for performance-based payments and interim payments on cost-type contracts, in the appropriate paragraphs of the respective payment clauses. However, for interim payments on cost-reimbursement contracts for services, see 232.906(a)(i).

(b) The contracting officer should coordinate contract financing payment terms with offices that will be involved in the payment process to ensure that specified terms can be met. Where justified, the contracting officer may insert a due date greater than, but not less than, the standard. In determining payment terms, consider—

- (i) Geographical separation;
- (ii) Workload;
- (iii) Contractor ability to submit a proper request; and
- (iv) Other factors that could affect timing of payment.

3. Section 232.070 is amended by revising paragraphs (a) and (c) to read as follows:

### 232.070 Responsibilities.

(a) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR Part 32 is at the DoD level and is not delegated to the departments and agencies. Proposals by the departments and agencies, to exercise agency discretion, shall be submitted to OUSD(AT&L)DPAP.

\* \* \* \* \*

(c) See PGI 232.070(c) for information on department/agency contract financing offices.

### 232.071 [Removed and Reserved]

4. Section 232.071 is removed and reserved.

### 232.108 [Removed]

5. Section 232.108 is removed.

### 232.206 [Amended]

6. Section 232.206 is amended by removing paragraph (d).

### 232.207 [Removed]

7. Section 232.207 is removed.

8. The heading of Subpart 232.4 is revised to read as follows:

**Subpart 232.4—Advance Payments for Non-Commercial Items****232.404 [Amended]**

9. Section 232.404 is amended in paragraph (a)(9) by removing “\$500” and adding in its place “\$2,500.”

10. Section 232.409–1 is revised to read as follows:

**§ 232.409–1 Recommendation for approval.**

Follow the procedures at PGI 232.409–1 for preparation of the documents required by FAR 32.409–1(e) and (f).

11. Section 232.410 is revised to read as follows:

**§ 232.410 Findings, determination, and authorization.**

If an advance payment procedure is used without a special bank account, follow the procedures at PGI 232.410.

12. Section 232.501–2 is revised to read as follows:

**§ 232.501–2 Unusual progress payments.**

Follow the procedures at PGI 232.501–2 for approval of unusual progress payments.

13. Section 232.501–3 is amended by revising paragraph (b) introductory text to read as follows:

**232.501–3 Contract price.**

(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract, provided the contract limits the Government's liability to the lesser of—

\* \* \* \* \*

**232.503–15 [Amended]**

14. Section 232.503–15 is amended in paragraph (d) introductory text, in the first sentence, by removing “252.242–7004(f)(7)” and adding in its place “252.242–7004(e)(7)”.

**232.605 [Amended]**

15. Section 232.605 is amended in paragraph (b) by removing the second sentence.

16. Section 232.606 is revised to read as follows:

**232.606 Debt determination and collection.**

When transferring a case to the contract financing office, follow the procedures at PGI 232.606.

17. Section 232.610 is revised to read as follows:

**232.610 Demand for payment of contract debt.**

When issuing a demand for payment of a contract debt, follow the procedures at PGI 232.610.

**232.616 [Amended]**

18. Section 232.616 is amended by removing “(232.108(1))” and adding in its place “(see 232.070(c))”.

19. Section 232.617 is revised to read as follows:

**232.617 Contract clause.**

(a) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), may exempt the contracts in FAR 32.617(a)(2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.

(7) Other exceptions are—

(A) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;

(B) Basic agreements with telephone companies for communications services and facilities, and purchases under such agreements; and

(C) Transportation contracts with common carriers for common carrier services.

20. Section 232.670 is revised to read as follows:

**232.670 Transfer of responsibility for debt collection.**

Follow the procedures at PGI 232.670 for transferring responsibility for debt collection.

21. Section 232.671 is revised to read as follows:

**232.671 Bankruptcy reporting.**

Follow the procedures at PGI 232.671 for bankruptcy reporting.

22. Section 232.903 is revised to read as follows:

**232.903 Responsibilities.**

DoD policy is to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract (see 232.906(a)).

23. Section 232.904 is added to read as follows:

**232.904 Determining payment due dates.**

(d) In most cases, Government acceptance or approval can occur within the seven day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14 day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the

Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

**232.905 [Removed]**

24. Section 232.905 is removed.

25. Section 232.906 is revised to read as follows:

**232.906 Making payments.**

(a)(i) Generally, the contracting officer shall insert the standard due date of 14 days for interim payments on cost-reimbursement contracts for services in the clause at FAR 52.232–25, Prompt Payment, when using the clause with its Alternate I.

(ii) The restrictions of FAR 32.906 prohibiting early payment do not apply to invoice payments made to small disadvantaged business concerns. Contractors shall not, however, be entitled to interest penalties if invoice payments are not made before the normal payment due dates established in the contract.

**232.1007 and 232.1108 [Removed]**

26. Sections 232.1007 and 232.1108 are removed.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 050421110–5110–01; I.D. 041505F]

RIN 0648–AT03

**Pacific Halibut Fisheries; Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Development Quota Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes an amendment to the Pacific halibut regulations for waters in and off Alaska.