

*b. Guidance on Determining "Physical Completeness"*

*Comment:* One recommendation was made to provide guidance on "physical completion."

*DPAP Response:* DPAP does not believe additional guidance on this issue is necessary. FAR 4.804-4 provides specific criteria that must exist for a contract to be physically complete.

## 20. Statute of Limitations

*Comment:* Two recommendations were made to shorten the statute of limitations for submission of a claim (currently six years) to mitigate issues concerning expired funds, lost documentation, software changes, and Government/contractor storage costs; and to consider that reducing the period would set precedence to reduce the time requirements in other areas.

*DPAP Response:* The length of time allowed for the submission of a claim is directly related to the period specified in the Contract Disputes Act (41 U.S.C. 605), which was amended upon enactment of the Clinger-Cohen Act in 1996. Any revision to this period would require a change to existing statutes. DPAP believes this issue is better addressed by focusing on the systemic issues that hinder contract closeout rather than pursuing a legislative change.

## 21. Transportation Clause

*Comment:* A recommendation was made to revise the clause at DFARS 252.247-7023, Transportation of Supplies by Sea, to reduce the needless inclusion of this clause in contracts or to consider issuing guidance specifying when the clause needs to be used. Currently it is often included when obviously unnecessary.

*DPAP Response:* DPAP will refer this issue to the DFARS Transportation Committee to review whether the current clause prescription should be revised.

## 22. Settlement of Contract Debts

*Comment:* A recommendation was made to permit the contracting officer to negotiate the settlement of contract debts across a number of contracts. This would avoid the need to find replacement funds, which often takes years and substantially delays the closeout process.

*DPAP Response:* DPAP does not believe any guidance is needed in the area of contract closeout to address this issue. However, DPAP notes that there is a current FAR case that is focusing on the contract debt process. Therefore, this recommendation will be forwarded

to the cognizant FAR team for consideration.

## 23. Consolidation of Guidance on Contract Closeout

*Comment:* A number of recommendations were made that the DCAA Contract Audit Closeout Guide be incorporated into PGI to establish a single reference source for contracting personnel, and that the PGI be supported with training.

*DPAP Response:* DPAP agrees that providing a consolidated resource for contract closeout guidance will facilitate the process. Thus, the DFARS case on contract closeout will include PGI language on contract closeout. In addition to providing basic guidance addressing the contract closeout process, this PGI section will also include links to agency guidebooks, training, and any other relevant information.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 207

**RIN 0750-AF39**

#### Defense Federal Acquisition Regulation Supplement; Lease of Vessels, Aircraft, and Combat Vehicles (DFARS Case 2006-D013)

**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 address statutory provisions relating to leasing. The proposed rule permits the lease of a vessel, aircraft, or combat vehicle only if the contract will be long-term or will provide for a substantial termination liability.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before July 23, 2007, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2006-D013, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2006-D013 in the subject line of the message.

- *Fax:* (703) 602-7887.

- *Mail:* Defense Acquisition

Regulations System, Attn: Mr. Gary Delaney, OUSD (AT&L) DPAP(DARS), IMD 3C132, 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:** Mr. Gary Delaney, (703) 602-8384.

#### SUPPLEMENTARY INFORMATION:

#### A. Background

10 U.S.C. 2401, as amended by Section 815 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), permits DoD to award a contract for the lease of a vessel, aircraft, or combat vehicle only if the contract will be long-term or will provide for a substantial termination liability, and if the Secretary concerned fulfills certain other requirements. Prior to the enactment of Public Law 109-163, the provisions of 10 U.S.C. 2401 applied to vessels and aircraft; Section 815 of Public Law 109-163 amended 10 U.S.C. 2401 to also include combat vehicles. This proposed rule amends DFARS 207.470 to reflect the statutory provisions.

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 relates primarily to DoD planning and budget considerations with regard to leasing of vessels, aircraft, and combat vehicles. 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 2006-D013.

**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 207**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR part 207 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. 421 and 48 CFR Chapter 1.

2. Section 207.470 is amended as follows:

a. By redesignating paragraphs (a) and (b) as paragraphs (b) and (c) respectively;

b. By adding a new paragraph (a); and

c. In newly designated paragraph (c), by removing “Except as provided in paragraph (a) of this section” and adding in its place “Except as provided in paragraphs (a) and (b) of this section”. The new paragraph (a) reads as follows:

**207.470 Statutory requirements.**

(a) *Requirement for statutory authorization for certain contracts relating to vessels, aircraft, and combat vehicles.* The contracting officer shall not enter into any contract for any vessel, aircraft, or combat vehicle, through a lease, charter, or similar agreement, or for services that provide for the use of the contractor’s vessel, aircraft, or combat vehicle, unless—

(1) The head of the agency has satisfied the requirements of 10 U.S.C. 2401; and

(2)(i) The contract will be a long-term lease, charter, or similar agreement (10 U.S.C. 2401(d)(1)); or

(ii) The terms of the contract provide for a substantial termination liability (10 U.S.C. 2401(d)(2)).

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 215****Contract Profit/Fee Policies**

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

**ACTION:** Request for public input.

**SUMMARY:** DoD is conducting a review of the Department’s contract profit/fee policies. As part of this review, DoD would like to hear the views of interested parties regarding the effectiveness of the profit/fee policies presently used for DoD contracts.

**DATES:** Submit written comments to the address shown below on or before July 23, 2007.

**ADDRESSES:** Submit comments to: Office of the Director, Defense Procurement and Acquisition Policy, ATTN: OUSD (AT&L) DPAP (CPF), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Comments also may be submitted by facsimile at (703) 602-7887, or by e-mail at [Bill.Sain@osd.mil](mailto:Bill.Sain@osd.mil).

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Sain, by telephone at (703) 602-0293, or by e-mail at [Bill.Sain@osd.mil](mailto:Bill.Sain@osd.mil).

**SUPPLEMENTARY INFORMATION:** DoD contract profit/fee policies, to include policy for developing pre-negotiation profit or fee objectives, are described in the Defense Federal Acquisition Regulation Supplement (DFARS), in sections 215.404-4 and 215.404-70 through 215.404-76. One of the key aspects of DoD’s profit policy is the Weighted Guidelines. While there have been some revisions to the Weighted Guidelines over the past few years, the basis for the existing policy was established in the mid-1980s. Since then, there have been a number of changes, including (1) the evolution of DoD’s acquisition programs, (2) extensive industry consolidation, and (3) a significant increase in the number of DoD contracts for services. In light of these many changes, DoD is interested in receiving public input on the existing profit/fee policies, with regard to those that are working effectively and those that should be revised or eliminated, along with supporting rationale. Potential areas for consideration include, but are not limited to, the following:

- The contractor risk factors used in DoD’s structured approach for developing profit/fee objectives, particularly with regard to—

- The pertinence of the existing factors;
- Whether the ranges and normal values used for the existing factors are still valid; and
- Whether there are other risk factors that are not reflected in the existing policies.
- Any changes needed to—
- The technology incentive at DFARS 215.404-71-2(c)(2) and (d)(4);
- The contract type risk factor at DFARS 215.404-71-3;
- The facilities capital employed factor at DFARS 215.404-71-4;
- The cost efficiency factor at DFARS 215.404-71-5;
- The modified weighted guidelines at DFARS 215.404-72;
- The policies as they provide for consideration of the amount of investment a contractor has in a contract;
- The policies as they provide for consideration of the extent of contract financing payments;
- The policies as they apply to contracts for services; and
- The policies as they apply to contracts for research, development, test, and evaluation.
- Whether any of the existing structured approaches for profit analysis should play a role in establishing the base fee or pool on award-fee contracts.

**Michele P. Peterson,**

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 232****Contract Financing**

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

**ACTION:** Request for public input.

**SUMMARY:** DoD is conducting a review of the Department’s contract financing policies. As part of this review, DoD would like to hear the views of interested parties regarding the effectiveness of the financing policies presently used for DoD contracts.

**DATES:** Submit written comments to the address shown below on or before July 23, 2007.

**ADDRESSES:** Submit comments to: Office of the Director, Defense Procurement and Acquisition Policy, ATTN: OUSD