

remove references to obsolete forms and procedures and reflect the current process. No start-up costs are expected as only Internet access is required should small entities elect to comment on their past performance rating in CPARS. This rule will not duplicate, overlap, or conflict with any other known Federal rule. There are no known alternatives to this proposed rule.

DoD invites comments from small businesses 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 2010–D024), in correspondence.

IV. Paperwork Reduction Act

The proposed rule does not impose additional 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 236

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 236 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 236 continues to read as follows:

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

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.201 [Removed]

2. Section 236.201 is removed.
3. Revise section 236.604 to read as follows:

236.604 Performance evaluation.

Prepare a separate performance evaluation after actual construction of the project. Ordinarily, the evaluating official should be the person most familiar with the A–E's performance.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 245

Defense Federal Acquisition Regulation Supplement; Responsibility and Liability for Government Property (DFARS Case 2010–D018)

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

ACTION: Proposed rule.

SUMMARY: DoD is issuing a proposed rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to extend the Government self-insurance policy to Government property provided under negotiated fixed-price contracts that are awarded on a basis other than submission of certified cost or pricing data.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 20, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2010–D018, using any of the following methods:

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

Submit comments via the Federal eRulemaking portal by inputting “DFARS Case 2010–D018” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2010–D018.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2010–D018” on your attached document.

○ *E-mail:* dfars@osd.mil. Include

DFARS Case 2010–D018 in the subject line of the message.

○ *FAX:* 703–602–0350.

○ *Mail:* Defense Acquisition

Regulations System, Attn: Mrs. Jennifer Abi-Najm, 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, 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.

FOR FURTHER INFORMATION CONTACT: Mrs. Jennifer Abi-Najm, 703–602–1013.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule will amend the DFARS to extend the Federal Acquisition Regulation (FAR) Government self-insurance policy for loss of Government property to negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data. FAR 45.104, Responsibility and liability for Government property, provides that contractors are not held liable for loss of Government property occurring under the following types of contracts:

- (1) Cost-reimbursement contracts.
- (2) Time-and-materials contracts.
- (3) Labor-hour contracts.

(4) Fixed-price contracts awarded on the basis of submission of certified cost or pricing data.

An exception to the FAR 45.104 policy for Government assumption of risk of loss is for negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data. This rule proposes that DoD contractors not be held liable for loss of Government property under such contracts, and eliminates the use of Alternate I of the FAR clause at 52.245–1, Government Property. Use of Alternate I requires contractors to assume the risk and be responsible for loss of Government property.

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 has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of this rule is to add negotiated fixed-priced contracts, awarded on a basis other than submission of certified cost or pricing data, to the list of contracts for which the Government is self-insuring and assumes risk of loss for Government property provided under such contracts. The basic premise of this case, that the Government should be self-insuring under contracts that provide Government property, is supported by the Government Accountability Office (GAO) policy contained in GAO publication, GAO-04-261SP Appropriations Law, and its decisions.

The Government generally self-insures against contractor loss of Government property acquired or provided under most negotiated Government contracts. An exception to this policy at FAR 45.104 is for negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data. For those contracts, the contractor is liable for loss of Government property (except for reasonable fair wear and tear) invoked by use of FAR clause 52.245-1, Government Property, with its Alternate I.

DoD has approximately 3,000 contractors with contracts that authorize furnishing some form of Government contract property. The majority of property (over 80 percent in terms of original acquisition value) is accountable to large businesses, with the remainder accountable to small entities.

Any impact of this rule on small entities is expected to be beneficial. Large businesses with substantial cash reserves may be in a financial position that enables those firms to select a high insurance deductible in order to garner lower premiums by electing to become self-insuring for potential property loss

up to the level of the deductible. Small entities may not have the financial capacity or capability to select a high insurance deductible in order to be self-insuring up to the higher thresholds. The effect of small entities not being able to select higher deductible thresholds may be to incur higher insurance premiums, which might negatively impact their ability to compete. The Government assuming the liability for loss of Government property under negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data should provide some relief for the small entities concerning costs to acquire insurance against risk of loss.

DoD invites comments from small businesses 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 2010-D018), in correspondence.

IV. Paperwork Reduction Act

This rule does not impose 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 245

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 245 is proposed to be amended as follows:

PART 245—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 245 continues to read as follows:

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

2. Section 245.104 is added to subpart 245.1 to read as follows:

245.104 Responsibility and liability for Government property.

(a) In addition to the contract types listed at FAR 45.104, contractors are not held liable for loss of Government property under negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data.

3. Section 245.107 is revised to read as follows:

245.107 Contract clauses.

(1) Use the clause at 252.245-7000, Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property is to be furnished.

(2) Use the clause at 252.245-7001, Tagging, Labeling, and Marking of Government-Furnished Property, in solicitations and contracts that contain the clause at FAR 52.245-1, Government Property.

(3) Use the clause at 252.245-7002, Reporting Loss of Government Property, in solicitations and contracts that contain the clause at FAR 52.245-1, Government Property.

(4) For negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data for which Government property is provided, use the clause at FAR 52.245-1, Government Property, without its Alternate I.

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