

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, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

#### V. Paperwork Reduction Act

This final rule does not contain 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 225

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 225 is amended as follows:

#### PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

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

#### 225.770 [Amended]

■ 2. Section 225.770 is amended in the first sentence to remove “Section 1211” and add “section 1211” in its place and add “and section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81)” at the end of the sentence.

■ 3. Section 225.770-5 is amended by revising paragraph (c) to read as follows:

#### 225.770-5 Waiver of prohibition.

\* \* \* \* \*

(c)(1) The official granting a waiver shall submit a report to the congressional defense committees, with a copy to the Director of Defense Procurement and Acquisition Policy (see PGI 225.770-5), not less than 15 days before issuing the waiver.

(2) In the report, the official shall—

(i) Identify the specific reasons for the waiver; and

(ii) Include recommendations as to what actions may be taken to develop

alternative sourcing capabilities in the future.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 204

**RIN 0750-AH71**

#### Defense Federal Acquisition Regulation Supplement: Contingency Contract Closeout (DFARS Case 2012-D014)

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require additional planning, monitoring, and executing activities for contract closeouts when the contracts are awarded for performance in contingency areas.

**DATES:** *Effective Date:* May 22, 2012.

**FOR FURTHER INFORMATION CONTACT:** Meredith Murphy, telephone 571-372-6098.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a recommendation made by the Government Accountability Office (GAO) report 11-891, “CONTINGENCY CONTRACTING: Improved Planning and Management Oversight Needed to Address Challenges with Closing Contracts,” dated August 23, 2011. The GAO recommended that DoD improve contract closeouts when the contracts are awarded for performance in contingency areas. The GAO recommended revising contract guidance to enhance advance planning for contingency contract closeouts. Additionally, the GAO advocated including a requirement that senior contracting officials monitor and assess the progress of contract closeout activities throughout the contingency operation.

The DFARS is amended at 204.804 to implement key elements proposed by the GAO. The head of the contracting activity is required to assign the highest priority to contracts performed in a contingency area in order to reduce

potential backlogs. Heads of contracting activities are responsible for supervising the progress of contingency contract closeout activities and taking appropriate steps if a backlog occurs.

## II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations,” 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because this amendment does not relate to the expenditure of appropriated funds, and has neither a significant effect beyond the internal operating procedures of DoD, or a significant cost or administrative impact on contractors or offerors. These requirements affect only the internal operating procedures of the Government.

## III. 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, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

## V. Paperwork Reduction Act

The rule does not contain 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 204

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 204 is amended to read 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. 1303 and CFR chapter 1.

■ 2. Section 204.804 is revised to read as follows:

#### 204.804 Closeout of contract files.

(1) Contracting officers shall close out contracts in accordance with the procedures at PGI 204.804. The closeout date for file purposes shall be determined and documented by the procuring contracting officer.

(2) The head of the contracting activity shall assign the highest priority to closeout of contracts awarded for performance in a contingency area. Heads of contracting activities must monitor and assess on a regular basis the progress of contingency contract closeout activities and take appropriate steps if a backlog occurs. For guidance on the planning and execution of closing out such contracts, see PGI 207.105(b)(20)(C)(8) and PGI 225.7404(e).

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 204 and 243

RIN 0750-AH56

#### Defense Federal Acquisition Regulation Supplement: Order of Application for Modifications (DFARS Case 2012-D002)

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to establish an order for application of contract modifications to resolve any potential conflicts that may arise from multiple modifications with the same effective date.

**DATES:** *Effective Date:* May 22, 2012.

**FOR FURTHER INFORMATION CONTACT:** Dr. Laura Welsh, telephone 571-372-6091.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published a proposed rule in the **Federal Register** at 77 FR 2679 on January 19, 2012, to establish an order for application of contract modifications. DFARS subpart 204.70, Uniform Procurement Instrument Identification Numbers, prescribes numbering procedures for contract modifications and the Federal Acquisition Regulation (FAR) part 43.1, General, prescribes rules for determining the effective date of contract modifications. There are no rules to describe in what order to apply modifications to determine the actual content of a resulting modified contract. In order to determine the sequence of modifications to a contract or order, a method for determining the order of application for modifications is needed to resolve any conflict arising from multiple modifications with the same effective date. Therefore, this final rule adds DFARS text at 204.7007, Order of Application for Modifications, to resolve any potential conflict in these circumstances. One respondent submitted a public comment in response to the proposed rule.

##### II. Discussion and Analysis of the Public Comment

DoD considered the public comment in the development of the final rule, which is discussed as follows.

*Comment:* A respondent suggested that a cross-reference to the proposed DFARS 204.7007 language be placed within DFARS part 243, Contract Modifications, as the rule addresses contract modifications.

*Response:* In response to the respondent's comment, a cross-reference to DFARS 204.7007 is added at DFARS 243.172. No other changes were made to the proposed rule.

##### III. 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, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### IV. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule finalizes a proposed amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) which was published on January 19, 2012. DFARS subpart 204.70, Uniform Procurement Instrument Identification Numbers, prescribes numbering procedures for contract modifications, and Federal Acquisition Regulation (FAR) subpart 43.1, General, prescribes guidelines for determining the effective date. There are no rules to describe in what order to apply modifications to determine the actual content of a resulting modified contract.

The objective of the rule is to provide a set of rules to the contracting officer to resolve any potential conflicts from multiple modifications with the same effective date.

There were no public comments in response to the initial regulatory flexibility analysis.

DoD received no comments by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

The changes required to the DFARS by this case only affect the internal operating processes of DoD by establishing an order of application for contract modifications. These changes are not expected to have an economic impact on contractors.

This rule does not impose any new reporting or recordkeeping requirements.

The alternative to this rule is to continue relying on DFARS subpart 204.70, which prescribes numbering procedures for contract modifications, and FAR subpart 43.1, which provides guidelines for determining the effective date. However, the cited text does not provide a clear structured path to ensure no ambiguity arises when determining in what order to apply modifications.