

South Coast, Ventura County, and West Mojave Desert NAAs.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 18, 2023.

Martha Guzman Aceves,
Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

- 2. Section 52.220 is amended by adding paragraph (c)(597) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(597) The following multi-district certification was submitted on February 3, 2022, by the Governor's designee, as an attachment to a letter dated February 3, 2022.

- (i) [Reserved]
- (ii) *Additional materials.* (A) California Air Resources Board.
(1) “California Clean Fuels for Fleets Certification for the 70 ppb Ozone Standard,” adopted on January 27, 2022.
(2) [Reserved]
(B) [Reserved]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 232, and 252

[Docket DARS-2022-0029]

RIN 0750-AJ46

Defense Federal Acquisition Regulation Supplement: Payment Instructions (DFARS Case 2017-D036)

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 provide payment instructions for certain contracts based on the type of item acquired and the type of payment.

DATES: Effective May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 87 FR 77053 on December 16, 2022, to amend the DFARS to provide payment instructions for certain contracts based on the type of item acquired and the type of payment. Two respondents submitted comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes from the Proposed Rule

Language in the clause at DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, is changed for clarity. The term “subcontractor progress payments” is changed to “subcontract financing” in the clauses at DFARS 252.232–7002, paragraph (d), and 252.232–7018, Progress Payments—Multiple Lots, paragraph (b)(4).

B. Analysis of Public Comments

1. Data Underlying the Proposed Rule

Comment: One respondent inquired about the set of data that underlies the proposed rule and whether such data adequately supports the proposed rule.

Response: Such data has not been published for public comment, but it was gathered in the normal course of compiling operational statistics relating to the manual entry of payment instructions in DoD payment systems. This rule standardizes payment instructions and therefore eliminates the need for such manual entry. This in turn eliminates the possibility of both data-entry errors and application of incorrect payment instructions.

2. Possible Ambiguity in Instructions for Progress Payment Requests

Comment: One respondent inquired whether paragraph (a) of the clause at

DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, requires separate submission of foreign military sales (FMS) progress payment requests combined with U.S. sales progress payment requests, or rather that the clause requires submission of FMS progress payment requests separate from U.S. ones.

Response: The intent is for FMS progress payment requests to be submitted separately from U.S. sales progress payment requests. The language in the clause at DFARS 252.232–7002 has been clarified in the final rule.

3. Prescription for the Clause at DFARS 252.232–70XX

Comment: One respondent inquired whether the prescription for the clause at DFARS 252.232–70XX, Progress Payments—Multiple Lots, should explicitly limit application of the clause to fixed price contracts.

Response: In accordance with Federal Acquisition Regulation 32.500(a), only fixed-price contracts may provide for progress payments. The prescription limits application of the clause at DFARS 252.232–7018 to contracts that provide for progress payments. DoD therefore declines the suggested change as unnecessary.

4. References to “Subcontractor Progress Payments”

Comment: One respondent recommends changing the term “subcontractor progress payments” to “subcontract financing” in the clauses at DFARS 252.232–7002(d) and 252.232–70XX(b)(4) to better align with relevant language in the Federal Acquisition Regulation.

Response: In the final rule, the term “subcontractor progress payments” is changed to “subcontract financing” in the clauses at DFARS 252.232–7002, paragraph (d), and 252.232–7018, paragraph (b)(4).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services, and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule clarifies payment instructions for certain contracts based on the type of item acquired and the type of payment by amending DFARS 252.204–7006, Billing Instructions—Cost Vouchers, and 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions. Application of these clauses to contracts at or below the SAT and to commercial services, commercial

products, and COTS items is unchanged. This final rule adds a new clause at 252.232–7018, Progress Payments—Multiple Lots. DoD will apply this clause to solicitations and contracts at or below the SAT and will not apply the clause to commercial services or commercial products, including COTS items.

IV. Expected Impact of the Rule

Currently, payment instructions are being entered manually into DoD’s payment systems due to a lack of clarity in the DFARS regarding payment instructions. This rule clarifies the payment instruction language in the DFARS. The clarifications in this rule will reduce data errors and inoperability problems throughout DoD’s business processes created by manual entry of payment instructions in the payment systems, as well as reducing the cost of data entry.

V. 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.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

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

The purpose of this rule is to provide clarifications on payment instructions for certain contracts based on the type of item acquired and the type of payment. DoD has found that the payment instructions often are not inserted when required and that payment instructions, if inserted, are often not appropriate for the contracts in question. An analysis of the issue showed that the appropriate accounting treatment for payments can be derived from the type of item acquired and the type of payment. In addition, the analysis highlighted the need to establish procedures for structuring progress payment requests for contracts with multiple production lots. The clarifications in this rule will promote consistency with generally accepted accounting principles and reduce data errors created by manual entry of payment instructions in the payment systems.

No public comments were received in response to the initial regulatory flexibility analysis.

The rule will apply to all small entities that will be awarded cost-reimbursement, time-and-material, or labor-hour contracts. However, the rule requires negligible additional effort by contractors, including small entities, because it simply clarifies the identification and use of payment information elements in payment requests. According to data from the Federal Procurement Data System for fiscal years 2020 through 2022, approximately 6,800 cost-reimbursement, time-and-material, and labor-hour contracts (0.01 percent of all awards) are awarded to approximately 1,100 small businesses (3 percent of all awardees) each year. This rule also applies to contracts that use multiple accounting classifications or that involve progress payments for multiple production lots. DoD cannot accurately quantify the number of contracts subject to the multiple-lot progress payments clause, but such contracts are likely few in number.

The rule does not contain any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known, significant, alternative approaches to the rule that would meet the objectives of the rule.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule regarding new DFARS clause 252.232–7018, Progress Payments—Multiple Lots. However, these changes to the DFARS do not impose additional information collection requirements to

the paperwork burden previously approved under Office of Management and Budget (OMB) Control Number 9000–0010, titled Progress Payments, SF 1443. The rule affects information collection requirements in DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, currently approved under OMB Control Number 0704–0321, titled “DFARS Part 232, Contract Financing, and the Clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisition.” The impact, however, is negligible because the changed reporting requirement is not anticipated to increase the estimate of total burden hours; rather the requirement to submit separate payment requests by rate is merely replaced by a requirement to submit separate payment requests for FMS and U.S. line items in the contract.

List of Subjects in 48 CFR Parts 204, 232, and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 232, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 232, and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Amend section 204.7109 by revising paragraph (b) to read as follows:

204.7109 Contract clauses.

* * * * *

(b) Use the clause at 252.204–7006, Billing Instructions—Cost Vouchers, in solicitations and contracts when a cost-reimbursement contract, a time-and-materials contract, or a labor-hour contract is contemplated.

PART 232—CONTRACT FINANCING

■ 3. Amend section 232.502–4–70 by adding paragraph (c) to read as follows:

232.502–4–70 Additional clauses.

* * * * *

(c) Use the clause at 252.232–7018, Progress Payments—Multiple Lots, to authorize separate progress payment requests for multiple lots.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.204–7006—

■ a. By revising the section heading, clause heading, and clause date; and
■ b. In the clause introductory text, removing “payment” and adding “payment using a cost voucher” in its place.

The revisions read as follows:

252.204–7006 Billing Instructions—Cost Vouchers.

* * * * *

Billing Instructions—Cost Vouchers (May 2023)

* * * * *

■ 5. Revise section 252.232–7002 to read as follows:

252.232–7002 Progress Payments for Foreign Military Sales Acquisitions.

As prescribed in 232.502–4–70(a), use the following clause:

Progress Payments for Foreign Military Sales Acquisitions (May 2023)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit separate progress payment requests for the FMS and U.S. line items in the contract;

(b) Submit a supporting schedule showing the amount of each request distributed to each country’s requirements;

(c) Identify in each progress payment request the contract requirements to which it applies (*i.e.*, FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontract financing, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among the countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

■ 6. Add section 252.232–7018 to read as follows:

252.232–7018 Progress Payments—Multiple Lots.

As prescribed in 232.502–4–70(c), use the following clause:

Progress Payments—Multiple Lots (May 2023)

(a) *Definitions.* As used in this clause—

Lot means one or more fixed-price deliverable line items or deliverable subline items representing a single, severable group where the sum of the costs for each group is segregated and a single progress payment rate is used.

Multiple lots means more than one lot on a single contract where progress payment proration is performed on a lot-wide, versus contract-wide, basis.

(b) When submitting progress payment requests under the billing instructions in Federal Acquisition Regulation (FAR) clause 52.232–16, Progress Payments, or Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.232–7002, Progress

Payments for Foreign Military Sales Acquisitions, of this contract, the Contractor shall—

(1) Submit separate progress payment requests for each lot identified in the contract;

(2) Identify the contract price for the lot as the sum of all fixed-priced line items identified to the lot, in accordance with FAR 32.501–3;

(3) Identify the lot on each progress payment request to which the request applies;

(4) Calculate each request on the basis of the price, costs (including the cost to complete), subcontractor financing, and progress payment liquidations of the lot to which it applies; and

(5) Distribute costs among lots in a manner acceptable to the Administrative Contracting Officer.

(c) Submit a separate progress payment request for U.S. and FMS requirements in accordance with the DFARS clause 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, of this contract.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 206

[Docket DARS–2023–0021]

RIN 0750–AL79

Defense Federal Acquisition Regulation Supplement: Modification of Authority of the Department of Defense To Carry Out Certain Prototype Projects (DFARS Case 2023–D006)

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 implement a section of the National Defense Authorization Act for Fiscal Year 2023.

DATES: Effective May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 703–901–3176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 842 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263),

which amends 10 U.S.C. 4022(f)(2) to permit the award of a follow-on production contract without the use of competitive procedures, even if explicit notification was not listed within the request for proposal for the prototype project transaction. This revision modifies the criteria required to award a follow-on production contract without the use of competitive procedures at DFARS 206.001–70(a), which requires other transaction solicitations and agreements to include provisions for a follow-on contract in order to qualify for an exception to competition requirements.

The statutory revision to the criteria does not implement new requirements; instead it removes one of the requirements. The statutes and regulations that implement DoD's other transactions authority permit DoD to provide, in the agreement, for the award of a follow-on production contract to a participant in the prototype project. Agreements made under DoD's other transactions authority are not subject to the Federal Acquisition Regulation (FAR) or DFARS; however, the award of a follow-on production contract resulting from such an other transaction agreement is subject to these acquisition regulations.

DoD issued a final rule for DFARS case 2019–D031 (87 FR 10989) on February 28, 2022, to implement section 815 of the NDAA for FY 2016 (Pub. L. 114–92), which modified the criteria required to exempt from competition certain follow-on production contracts at DFARS 206.001–70(a)(1) and (2).

This final rule removes from DFARS 206.001–70(a)(1) the other transaction solicitation requirement and clarifies that an other transaction agreement is still statutorily required (10 U.S.C. 4022(f)(1)) to provide for the award of a follow-on production contract in order for a contracting officer to award the follow-on production contract without obtaining competition. DFARS 206.001–70(a)(2) is revised to require documentation from the agreements officer for the other transaction agreement that, where applicable for the prototype project, the threshold at 10 U.S.C. 4022(a)(2)(C) and the requirements at 10 U.S.C. 4022(f)(2)(A) and (B) have been met. These and additional revisions in 206.001–70(a) are intended to ensure an accurate interpretation of the statutory requirements of 10 U.S.C. 4022 that are subject to the DFARS.

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

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (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 DoD is removing a requirement that is no longer mandated by statute and that affects only the internal operating procedures of DoD.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Services and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not impose any new requirements on contracts at or below the simplified acquisition threshold, for commercial services, or for commercial products, including commercially available off-the-shelf items.

IV. 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.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and to the Comptroller General of the United States. A major rule under the