

low power television and television translator stations will be made up of a prefix consisting of the initial letter K or W followed by the channel number assigned to the station and two additional letters and a suffix consisting of the letters –D, consistent with paragraph (d) of this section. Prior to filing a license to cover, a new low power television station must modify its call sign to be consistent with the requirements of paragraph (c) of this section.

(b) *Television translator stations.* Call signs for television translator stations will be made up of a prefix consisting of the initial letter K or W followed by the channel number assigned to the station and two additional letters and a suffix consisting of the letter –D, consistent with paragraph (d) of this section.

(c) *Low power television stations and Class A television stations.* Low power television and Class A television stations will be made up of a call sign with a four-letter prefix pursuant to § 73.3550 of this chapter along with a two-letter suffix. Low power stations will be assigned the suffix –LD and Class A stations will be assigned the suffix –CD.

* * * * *

■ 31. Section 74.793 is amended by revising paragraph (b) and adding paragraphs (i) and (j) to read as follows:

§ 74.793 Low power TV and TV translator station protection of broadcast stations.

* * * * *

(b) Except as provided in this section, interference prediction analysis is based on the interference thresholds (D/U signal strength ratios) and other criteria and methods specified in § 73.620 of this chapter. The 2 km cell size specified in § 73.620(b) is not permitted for Class A, LPTV, TV translator, DRT, and DTDRT stations, and if not specified in the application, the 1 km cell size will be assumed.

* * * * *

(i) LPTV, TV translator, DRT, and DTDRT stations may negotiate interference consent agreements consistent with §§ 73.620(e) and 73.6022.

(j) If an existing authorization exceeds the interference thresholds consistent with paragraphs (g) or (h) of this section, when filing a non-displacement minor modification it may create interference up to but not exceeding the level previously authorized. In determining this level, the proposal shall use the same cell size and path profile increment in showing both the existing and proposed interference. If the proposal is subject to a formal

interference agreement, that agreement must be included as an exhibit to the application.

■ 32. Section 74.794 is amended by revising paragraph (a)(1) to read as follows:

§ 74.794 Emissions.

(a)(1) An applicant for an LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: Simple, stringent, or full service. Stations proposing new or modified operation on channel 14 shall specify either the stringent or full service emission mask.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 215, 234, 242, 244, 245, and 252

[Docket DARS–2024–0020]

RIN 0750–AL25

Defense Federal Acquisition Regulation Supplement: Definition of Material Weakness (DFARS Case 2021–D006)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021 that defines the term “material weakness” for Government evaluation of contractor business systems. The term “material weakness” replaces the term “significant deficiency.”

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 26, 2024, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2021–D006, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2021–D006. Select “Comment” and follow the instructions to submit a comment. Please include

“DFARS Case 2021–D006” on any attached documents.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2021–D006 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Snyder, telephone 703–945–5341.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to implement section 806 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283), which amends section 893 of the NDAA for FY 2011 (Pub. L. 111–383). Section 893 of the NDAA for FY 2011 requires a program for the improvement of contractor business systems and provides for DoD approval or disapproval of contractor business systems. Section 806 of the NDAA for FY 2021 defines the term “material weakness”, which replaces the term “significant deficiency.”

II. Discussion and Analysis

This proposed rule replaces the term “significant deficiency” with “material weakness” in each of the following DFARS contract clauses: 252.215–7002, Cost Estimating System Requirements; 252.234–7002, Earned Value Management System; 252.242–7004, Material Management and Accounting System; 252.242–7005, Contractor Business Systems; 252.242–7006, Accounting System Administration; 252.244–7001, Contractor Purchasing System Administration-Basic and Alternate I; and 252.245–7003, Contractor Property Management System Administration. The term “material weakness” means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is probable or more than remote but less than likely.

This definition of “material weakness” aligns with generally accepted auditing standards. This proposed rule will therefore assist DoD

to maintain appropriate oversight over contractor business systems by enabling clear classification of deficiencies according to their severity, consistent with generally accepted auditing standards.

To conform with this definitional change, this proposed rule also replaces the term “significant deficiency” with the term “material weakness” each place it appears in DFARS parts 215, 234, 242, 244, and 245. Further, this proposed rule adds the word “underlying” to describe “deficiencies” in certain parts of the affected DFARS text to emphasize that material weaknesses are comprised of one or more deficiencies.

Additionally, this proposed rule adds the full text of definitions in DFARS parts 215, 234, 242, 244, and 245 in place of references to definitions located in DFARS clauses. These definitions are substantially unchanged. This change is intended to assist contracting officers by minimizing cross-references. The definition of “material weakness” is added at DFARS 202.101, since the term applies to multiple DFARS parts in the proposed rule.

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

This proposed rule amends the clauses at DFARS 252.215–7002, 252.234–7002, 252.242–7004, 252.242–7005, 252.242–7006, 252.244–7001—Basic and Alternate I, and 252.245–7003. However, this proposed rule does not impose any new requirements on contracts at or below the SAT, for commercial products, including COTS items, or for commercial services. Applicability of the clauses to acquisitions at or below the SAT, to acquisitions of commercial products, including COTS items, and to acquisitions of commercial services remains unchanged.

IV. Expected Impact of the Rule

Presently, the DFARS includes a definition of “significant deficiency” in the context of DoD evaluation of contractor business systems. “Significant deficiency” is defined as “a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.” This proposed rule replaces the term “significant deficiency” in the DFARS with the term “material weakness,” defined as a deficiency or

combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is probable or more than remote but less than likely.

This definition of “material weakness” provides more detail and clarity both to DoD and to industry in the context of evaluating contractor business systems compared to the definition of “significant deficiency.” This definition of “material weakness” also aligns with generally accepted auditing standards. Therefore, this proposed rule will both create consistency with generally accepted auditing standards and minimize confusion about the seriousness of deficiencies, which will aid both DoD and industry.

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, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, 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 this proposed rule does not require contractors to alter their existing business practices. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 806 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 806 amends section 893 of the NDAA for FY 2011 (Pub. L. 111–383), which requires a program for the

improvement of contractor business systems and provides for DoD approval or disapproval of contractor business systems. Section 806 of the NDAA for FY 2021 replaces the term “significant deficiency” with “material weakness” and defines the term “material weakness.”

The objective of the rule is to introduce the term “material weakness” for Government evaluation of contractor business systems, replacing the term “significant deficiency.” The definition of “material weakness” aligns with generally accepted auditing standards. This proposed rule will help DoD maintain appropriate oversight over contractor business systems by enabling clear classification of deficiencies according to severity. The legal basis for the rule is section 806 of the NDAA for FY 2021.

The proposed rule may impact small entities that are awarded DoD contracts. Based on data from the Federal Procurement Data System and the Electronic Data Access for FY 2021 through FY 2023, DoD estimates that an average of 5,134 unique small entities are awarded an average of 22,263 contract actions annually that include one or more relevant clauses.

This proposed rule does not impose any new reporting, recordkeeping or other compliance requirements.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives that would accomplish the stated objectives of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed 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 2021–D006), in correspondence.

VII. Paperwork Reduction Act

This proposed 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 Parts 202, 215, 234, 242, 244, 245, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System proposes to amend 48 CFR parts 202, 215, 234, 242, 244, 245, and 252 as follows:

■ 1. The authority citation for 48 CFR parts 202, 215, 234, 242, 244, 245, and 252 continues to read as follows:

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

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 202.101 by adding in alphabetical order the definition of “Material weakness” to read as follows:

202.101 Definitions.

* * * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

- (1) Probable; or
- (2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

- 3. Amend section 215.470–5–70—
- a. By revising paragraph (a);
 - b. In paragraph (c)(2)(ii) by removing “any deficiencies” and adding “any weaknesses or deficiencies” in its place;
 - c. By revising and republishing paragraph (d); and
 - d. In paragraph (e) by removing “significant deficiencies” and adding “material weaknesses” in its place.

The revisions and republications read as follows:

215.407–5–70 Disclosure, maintenance, and review requirements.

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

Acceptable estimating system means an estimating system that complies with the system criteria in paragraph (d) of 252.215–7002, Cost Estimating System Requirements, and provides for a system that—

(i) Is maintained, reliable, and consistently applied;

(ii) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(iii) Is consistent with and integrated with the contractor’s related management systems; and

(iv) Is subject to applicable financial control systems.

Contractor means a business unit as defined in FAR 2.101.

Estimating system means the contractor’s policies, procedures, and practices for budgeting and planning controls and for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the contractor’s—

- (i) Organizational structure;
- (ii) Established lines of authority, duties, and responsibilities;
- (iii) Internal controls and managerial reviews;
- (iv) Flow of work, coordination, and communication; and
- (v) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

* * * * *

(d) *Disposition of findings*—(1) *Reporting of findings.* The auditor shall document findings and recommendations in a report to the contracting officer. If the auditor identifies any material weaknesses, the report shall describe the underlying deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses and deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review all findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor, in writing, that the contractor’s estimating system is acceptable and approved; or (ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor’s failure to meet one or more of the estimating system criteria in the clause at 252.215–7002, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the deficiency (see PGI 215.407–5–70(d)(2));

(B) Request the contractor to respond in writing to the initial determination within 30 days; and

(C) Promptly evaluate the contractor’s responses to the initial determination,

in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor in writing that—

(A) The contractor’s estimating system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(2) Disapprove the system in accordance with the clause at 252.215–7002; and

(3) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor’s corrective action and the correction of material weaknesses in PGI 215.407–5–70(d)(3).

* * * * *

PART 234—MAJOR SYSTEM ACQUISITION**234.001 [Redesignated as 234.001–70]**

■ 4. Redesignate section 234.001 as section 234.001–70.

■ 5. Revise newly redesignated section 234.001–70 to read as follows:

234.001–70 Definitions.

As used in this part—

Acceptable earned value management system means an earned value management system that generally complies with system criteria in paragraph (b) of 252.234–7002, Earned Value Management System.

Earned value management system means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA–748.

Production of major defense acquisition program means the production and deployment of a major system that is intended to achieve an operational capability that satisfies mission needs, or an activity otherwise defined as Milestone C under Department of Defense Instruction 5000.02 or related authorities.

■ 6. Amend section 234.201—

- a. In paragraph (5)(ii) by removing “any deficiencies” and adding “any weaknesses or deficiencies” in its place;
- b. By revising and republishing paragraph (7); and
- c. In paragraph (8) by removing “significant deficiencies” and adding “material weaknesses” in its place.

The revision and republication reads as follows:

234.201 Policy.

* * * * *

(7) *Disposition of findings*—(i) *Reporting of findings.* The functional specialist or auditor shall document findings and recommendations in a report to the contracting officer. If the functional specialist or auditor identifies any material weaknesses in the contractor’s earned value management system, the report shall describe the weaknesses or deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(ii) *Initial determination.* (A) The contracting officer shall review all findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor, in writing, that the contractor’s earned value management system is acceptable and approved; or

(B) If the contracting officer finds that there are one or more material weaknesses due to the contractor’s failure to meet one or more of the earned value management system criteria in the clause at 252.234–7002, the contracting officer shall—

(1) Promptly make an initial written determination of any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weaknesses (see PGI 234.201(7)(ii));

(2) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(3) Evaluate the contractor’s response to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(iii) *Final determination.* (A) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(1) The contractor’s earned value management system is acceptable and approved, and no material weaknesses remain; or

(2) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed

corrective action. The contracting officer shall—

(i) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(ii) Disapprove the system in accordance with the clause at 252.234–7002 when initial validation is not successfully completed within the timeframe approved by the contracting officer, or the contracting officer determines that the existing earned value management system contains one or more material weaknesses in high-risk guidelines in ANSI/EIA–748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32).

When the contracting officer determines that the existing earned value management system contains one or more material weaknesses in one or more of the remaining 16 guidelines in ANSI/EIA–748 standards, the contracting officer shall use discretion to disapprove the system based on input received from functional specialists and the auditor; and

(iii) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(B) Follow the procedures relating to monitoring a contractor’s corrective action and the correction of material weaknesses at PGI 234.201(7)(iii).

* * * * *

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.302 [Amended]

■ 7. Amend section 242.302 in paragraph (a)(7) by removing “deficiencies” and adding “weaknesses or deficiencies” in its place.

■ 8. Revise and republish section 242.7000 to read as follows:

242.7000 Contractor business system deficiencies.

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

Acceptable contractor business systems means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of *contractor business systems* in this section.

Contractor business systems means—

(i) Accounting system, if the contract includes the clause at 252.242–7006, Accounting System Administration;

(ii) Earned value management system, if the contract includes the clause at

252.234–7002, Earned Value Management System;

(iii) Estimating system, if the contract includes the clause at 252.215–7002, Cost Estimating System Requirements;

(iv) Material management and accounting system, if the contract includes the clause at 252.242–7004, Material Management and Accounting System;

(v) Property management system, if the contract includes the clause at 252.245–7003, Contractor Property Management System Administration; and

(vi) Purchasing system, if the contract includes the clause at 252.244–7001, Contractor Purchasing System Administration.

Covered contract means a contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (10 U.S.C. 3841 note prec., as amended by section 816 of Pub. L. 112–81).

(b) *Determination to withhold payments.* If the contracting officer makes a final determination to disapprove a contractor’s business system in accordance with the clause at 252.242–7005, Contractor Business Systems, the contracting officer shall—

(1) In accordance with agency procedures, identify one or more covered contracts containing the clause at 252.242–7005 from which payments will be withheld. When identifying the covered contracts from which to withhold payments, the contracting officer shall ensure that the total amount of payment withholding under 252.242–7005 does not exceed 10 percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. Similarly, the contracting officer shall ensure that the total amount of payment withholding under the clause at 252.242–7005 for each business system does not exceed 5 percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. The contracting officer has the sole discretion to identify the covered contracts from which to withhold payments.

(2) Promptly notify the contractor, in writing, of the contracting officer’s determination to implement payment withholding in accordance with the clause at 252.242–7005. The notice of payment withholding shall be included

in the contracting officer's written final determination for the contractor business system and shall inform the contractor that—

(i) Payments shall be withheld from the contract or contracts identified in the written determination in accordance with the clause at 252.242–7005, until the contracting officer determines that there are no remaining material weaknesses; and

(ii) The contracting officer reserves the right to take other actions within the terms and conditions of the contract.

(3) Provide a copy of the determination to all contracting officers administering the selected contracts from which payments will be withheld. The contracting officer shall also provide a copy of the determination to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(c) *Monitoring contractor's corrective action.* The contracting officer, in consultation with the auditor or functional specialist, shall monitor the contractor's progress in correcting the weaknesses. The contracting officer shall notify the contractor of any decision to decrease or increase the amount of payment withholding in accordance with the clause at 252.242–7005.

(d) *Correction of material weaknesses.* (1) If the contractor notifies the contracting officer that the contractor has corrected the material weaknesses, the contracting officer shall request the auditor or functional specialist to review the correction to verify that the weaknesses have been corrected. If, after receipt of verification, the contracting officer determines that the contractor has corrected all material weaknesses as directed by the contracting officer's final determination, the contracting officer shall discontinue the withholding of payments, release any payments previously withheld, and approve the system, unless other material weaknesses remain.

(2) Prior to the receipt of verification, the contracting officer may discontinue withholding payments pending receipt of verification, and release any payments previously withheld, if the contractor submits evidence that the material weaknesses have been corrected, and the contracting officer, in consultation with the auditor or functional specialist, determines that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the material weaknesses.

(3) Within 90 days of receipt of the contractor notification that the contractor has corrected the material weaknesses, the contracting officer shall—

(i) Make a determination that—

(A) The contractor has corrected all material weaknesses as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section;

(B) There is a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(C) The contractor has not corrected all material weaknesses as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section, or there is not a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(ii) Reduce withholding directly related to the material weaknesses covered under the corrective action plan by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the contractor, in writing, to reduce the percentage withheld on interim cost vouchers by at least 50 percent, until the contracting officer makes a determination in accordance with paragraph (d)(3)(i) of this section.

(4) If, at any time, the contracting officer determines that the contractor has failed to correct the material weaknesses identified in the contractor's notification, the contracting officer will continue, reinstate, or increase withholding from progress payments and performance-based payments, and direct the contractor, in writing, to continue, reinstate, or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the contracting officer determines that the contractor has corrected all material weaknesses as directed by the contracting officer's final determination.

(e) *Sample formats.* For sample formats for written notifications of contracting officer determinations to initiate payment withholding, reduce payment withholding, and discontinue payment withholding in accordance with the clause at 252.242–7005, see PGI 242.7000.

■ 9. Revise section 242.7201 to read as follows:

242.7201 Definitions.

As used in this subpart—

Acceptable material management and accounting system means a material management and accounting system that

generally complies with the system criteria in paragraph (d) of the clause at 252.242–7004, Material Management and Accounting System.

Material management and accounting system (MMAS) means the contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems, or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

Valid time-phased requirements means material that is—

(1) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(2) Charged or billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

242.7202 [Amended]

■ 10. Amend section 242.7202 in paragraph (b)(2) by removing “any deficiencies” and adding “any weaknesses or deficiencies” in its place.

■ 11. Amend section 242.7203 by—

■ a. Revising and republishing paragraph (c); and

■ b. Revising paragraph (d).

The revisions and republication read as follows:

242.7203 Review procedures.

* * * * *

(c) *Disposition of findings*—(1) *Reporting of findings.* The auditor or functional specialist shall document findings and recommendations in a report to the contracting officer. If the auditor or functional specialist identifies any material weaknesses, the report shall describe the weaknesses or deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor, in writing, that the contractor's MMAS is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor's failure to meet one or more of the MMAS system criteria in the clause at 252.242–7004, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each

material weakness in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's response to the initial determination in consultation with the auditor or functional specialist and make a final determination (see PGI 242.7203(c)(2)).

(3) *Final determination.* (i) The ACO shall make a final determination and notify the contractor that—

(A) The contractor's MMAS is acceptable and approved, and no deficiencies remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(2) Disapprove the system in accordance with the clause at 252.242-7004; and

(3) Withhold payments in accordance with the clause at 252.242-7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 242.7203(c)(3).

(d) *System approval.* The contracting officer shall promptly approve a previously disapproved MMAS and notify the contractor when the contracting officer determines that there are no remaining material weaknesses.

* * * * *

■ 12. Revise section 242.7501 to read as follows:

242.7501 Definitions.

As used in this subpart—

Acceptable accounting system means a system that complies with the system criteria in paragraph (c) of the clause at 252.242-7006, Accounting System Administration, to provide reasonable assurance that—

(1) Applicable laws and regulations are complied with;

(2) The accounting system and cost data are reliable;

(3) Risk of misallocations and mischarges are minimized; and

(4) Contract allocations and charges are consistent with billing procedures.

Accounting system means the contractor's system or systems for

accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

■ 13. Amend section 242.7502—

■ a. In paragraph (b)(2) by removing “any deficiencies” and adding “any weaknesses or deficiencies” in its place;

■ b. By revising and republishing paragraph (d);

■ c. By revising paragraph (e);

■ d. In the paragraph (g) heading and paragraphs (g)(1) and (g)(2)(i) by removing “accounting system”;

■ e. In paragraph (g)(2)(iii) by removing “accounting system's”; and

■ f. In paragraph (g)(3) introductory text by removing “an accounting system deficiency” and adding “a deficiency” in its place.

The revisions and republication read as follows:

242.7502 Policy.

* * * * *

(d) *Disposition of findings—(1) Reporting of findings.* The auditor shall document findings and recommendations in a report to the contracting officer. If the auditor identifies any material weakness, the report shall describe the weaknesses or deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies. Follow the procedures at PGI 242.7502 for reporting of deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor, in writing, that the contractor's accounting system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor's failure to meet one or more of the accounting system criteria in the clause at 252.242-7006, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness (see PGI 242.7502(d)(2));

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's response to the initial determination, in

consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's accounting system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(2) Make a determination to disapprove the system in accordance with the clause at 252.242-7006; and

(3) Withhold payments in accordance with the clause at 252.242-7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 242.7502(d)(3).

(e) *System approval.* The contracting officer shall promptly approve a previously disapproved accounting system and notify the contractor when the contracting officer determines that there are no remaining material weaknesses.

* * * * *

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 14. Revise section 244.101 to read as follows:

244.101 Definitions.

As used in this subpart—

Acceptable purchasing system means a purchasing system that complies with the system criteria in paragraph (c) of the clause at 252.244-7001.

Purchasing system means the contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

■ 15. Amend section 244.305-70—

■ a. In the introductory text be removing “subsection” and adding “section” in its place;

■ b. By revising and republishing paragraph (c);

- c. By revising paragraph (d);
- d. In the paragraph (f) heading and paragraphs (f)(1) and (f)(2)(i) by removing “purchasing system”;
- e. In paragraph (f)(2)(iii) by removing “purchasing system’s”; and
- f. In paragraph (f)(3) introductory text by removing “purchasing system”.

The revisions and republication read as follows:

244.305–70 Policy.

* * * * *

(c) *Disposition of findings*—(1) *Reporting of findings.* The purchasing system analyst or auditor shall document findings and recommendations in a report to the contracting officer. If the auditor or purchasing system analyst identifies any material weaknesses, the report shall describe the underlying deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses and deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review all findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor that the contractor’s purchasing system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor’s failure to meet one or more of the purchasing system criteria in the clause at 252.244–7001, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness (see PGI 244.305–70(c)(2));

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Evaluate the contractor’s response to the initial determination in consultation with the auditor or purchasing system analyst and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor’s purchasing system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final

determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(2) Disapprove the system in accordance with the clause at 252.244–7001; and

(3) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor’s corrective action and the correction of material weaknesses in PGI 244.305–70(c)(3).

(d) *System approval.* The contracting officer shall promptly approve a previously disapproved purchasing system and notify the contractor when the contracting officer determines that there are no remaining material weaknesses.

* * * * *

PART 245—GOVERNMENT PROPERTY

■ 16. Amend section 245.105—

- a. By revising paragraph (a);
- b. In paragraph (b)(2) by removing “any deficiencies” and adding “any weaknesses or deficiencies” in its place;
- c. By revising and republishing paragraph (d); and
- d. In paragraph (e) by removing “significant deficiencies” and adding “material weaknesses” in its place.

The revisions and republication read as follows:

245.105 Contractors’ property management system compliance.

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

Acceptable property management system means a property system that complies with the system criteria in paragraph (c) of the clause at 252.245–7003, Contractor Property Management Administration.

Property management system means the contractor’s system or systems for managing and controlling Government property.

* * * * *

(d) *Disposition of findings*—(1) *Reporting of findings.* The property administrator shall document findings and recommendations in a report to the contracting officer. If the property administrator identifies any material weaknesses, the report shall describe the underlying deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review findings and recommendations and, if there are

no material weaknesses, shall promptly notify the contractor, in writing, that the contractor’s property management system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor’s failure to meet one or more of the property management system criteria in the clause at 252.245–7003, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness (see PGI 245.105(d)(2));

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Evaluate the contractor’s response to the initial determination, in consultation with the property administrator, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor’s property management system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(2) Disapprove the system in accordance with the clause at 252.245–7003; and

(3) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor’s corrective action and the correction of material weaknesses in PGI 245.105(d)(3).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 17. Amend section 252.215–7002—

- a. By revising the section heading and clause date;
- b. In paragraph (a) by—
- i. Adding in alphabetical order the definition of “Material weakness”; and

- ii. Removing the definition of “Significant deficiency”;
 - c. By revising and republishing paragraph (e); and
 - d. By revising paragraph (f).
- The addition, revisions, and republication read as follows:

252.215–7002 Cost Estimating System Requirements.

* * * * *

Cost Estimating System Requirements (Date)

(a) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

- (1) Probable; or
- (2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(e) *Material weaknesses.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor’s estimating system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor’s response and notify the Contractor, in writing, of the Contracting Officer’s final determination concerning—

- (i) Remaining material weaknesses;
- (ii) The adequacy of any proposed or completed corrective action; and
- (iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(f) If the Contractor receives the Contracting Officer’s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

* * * * *

- 18. Amend section 252.234–7002—

- a. By revising the clause date;
- b. In paragraph (a) by—
- i. Adding in alphabetical order the definition of “Material weakness”; and
- ii. Removing the definition of “Significant deficiency”;
- c. By revising and republishing paragraph (i); and
- d. By adding a heading to paragraph (k).

The additions, revisions, and republication read as follows:

252.234–7002 Earned Value Management System.

* * * * *

Earned Value Management System (Date)

(a) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

- (1) Probable; or
- (2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(i) *Material weaknesses.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor’s EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor’s response and notify the Contractor, in writing, of the Contracting Officer’s final determination concerning—

- (i) Remaining material weaknesses;
- (ii) The adequacy of any proposed or completed corrective action;
- (iii) System noncompliance, when the Contractor’s existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA–748; and
- (iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or

if the Contracting Officer determines that the Contractor’s earned value management system contains one or more material weaknesses in high-risk guidelines in ANSI/EIA–748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more material weaknesses in one or more of the remaining 16 guidelines in ANSI/EIA–748 standards, the Contracting Officer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

(4) If the Contractor receives the Contracting Officer’s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

* * * * *

(k) *Subcontracts.* * * *

* * * * *

- 19. Amend section 252.242–7004 by—

- a. Revising the clause date and paragraph (a);
- b. Revising and republishing paragraph (e); and
- c. Revising paragraph (f).

The revisions and republication read as follows:

252.242–7004 Material Management and Accounting System.

* * * * *

Material Management and Accounting System (Date)

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

Acceptable material management and accounting system means a material management and accounting system that generally complies with the system criteria in paragraph (d) of this clause.

Contractor means a business unit as defined in Federal Acquisition Regulation (FAR) 2.101.

Material management and accounting system (MMAS) means the Contractor’s system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems, or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

Material weakness means a deficiency or combination of deficiencies in the internal control over information in

contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

- (1) Probable; or
- (2) More than remote but less than likely (section 806 of Pub. L. 116–283).

Valid time-phased requirements means material that is—

- (1) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and
- (2) Charged or billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

* * * * *

(e) *Material weaknesses.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiencies in sufficient detail to allow the Contractor to understand the weaknesses or deficiencies.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor’s MMAS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor’s response and notify the Contractor, in writing, of the Contracting Officer’s final determination concerning—

- (i) Remaining material weaknesses;
- (ii) The adequacy of any proposed or completed corrective action; and
- (iii) System disapproval if the Contracting Officer determines that one or more material weaknesses remain.

(f) If the Contractor receives the Contracting Officer’s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

* * * * *

- 20. Amend section 252.242–7005—
- a. By revising the section heading and clause date;
- b. In paragraph (b) by—
- i. Adding in alphabetical order the definition of “Material weakness”; and

- ii. Removing the definition of “Significant deficiency”; and
- c. By revising paragraphs (d), (e)(1) and (2), (e)(3)(i), and (f).

The addition and revisions read as follows:

252.242–7005 Contractor Business Systems.

* * * * *

Contractor Business Systems (Date)

* * * * *

(b) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

- (1) Probable; or
- (2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(d) *Material weaknesses.* (1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more material weaknesses in one or more of the Contractor’s business systems.

(2) The Contracting Officer will evaluate the Contractor’s response and notify the Contractor, in writing, of the final determination as to whether the Contractor’s business system contains material weaknesses. If the Contracting Officer determines that the Contractor’s business system contains material weaknesses, the final determination will include a notice to withhold payments.

(e) * * *

(1) If the Contracting Officer issues the final determination with a notice to withhold payments for material weaknesses in a contractor business system required under this contract, the Contracting Officer will withhold 5 percent of amounts due from progress payments and performance-based payments, and direct the Contractor, in writing, to withhold 5 percent from its billings on interim cost vouchers on cost-reimbursement, labor-hour, and time-and-materials contracts until the Contracting Officer has determined that the Contractor has corrected all material weaknesses as directed by the Contracting Officer’s final determination. The Contractor shall, within 45 days of receipt of the notice, either correct the weaknesses or submit

an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses.

(2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer’s intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will reduce withholding directly related to the material weaknesses covered under the corrective action plan, to 2 percent from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the percentage withheld on interim cost vouchers to 2 percent until the Contracting Officer determines the Contractor has corrected all material weaknesses as directed by the Contracting Officer’s final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding from progress payments and performance-based payments, and direct the Contractor, in writing, to increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all material weaknesses as directed by the Contracting Officer’s final determination.

(3) * * *

(i) The total percentage of payments withheld on amounts due under each progress payment, performance-based payment, or interim cost voucher on this contract shall not exceed—

(A) Five percent for one or more material weaknesses in any single contractor business system; and

(B) Ten percent for material weaknesses in multiple contractor business systems.

* * * * *

(f) *Correction of weaknesses.* (1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system’s weaknesses.

(2) Once the Contractor has notified the Contracting Officer that all weaknesses have been corrected, the Contracting Officer will take one of the following actions:

(i) If the Contracting Officer determines that the Contractor has corrected all material weaknesses as directed by the Contracting Officer's final determination, the Contracting Officer will, as appropriate, discontinue the withholding of progress payments and performance-based payments, and direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers under this contract associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other material weaknesses. Any payment withholding under this contract due to other material weaknesses will remain in effect until the Contracting Officer determines that those material weaknesses are corrected.

(ii) If the Contracting Officer determines that the Contractor still has material weaknesses, the Contracting Officer will continue the withholding of progress payments and performance-based payments, and the Contractor shall continue withholding amounts from its billings on interim cost vouchers in accordance with paragraph (e) of this clause, and not bill for any monies previously withheld.

(iii) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the material weaknesses, the Contracting Officer will discontinue withholding payments, release any payments previously withheld directly related to the material weaknesses identified in the Contractor notification, direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld.

(iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the material weaknesses, the Contracting Officer has not made a determination in accordance with paragraph (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will reduce withholding directly related to the material weaknesses identified in the Contractor notification by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the payment withholding from billings on interim cost vouchers directly related to the material weaknesses identified in

the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraph (f)(2)(i), (ii), or (iii) of this clause.

(v) At any time after the Contracting Officer reduces or discontinues the withholding of progress payments and performance-based payments, or directs the Contractor to reduce or discontinue the payment withholding from billings on interim cost vouchers under this contract, if the Contracting Officer determines that the Contractor has failed to correct the material weaknesses identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding from progress payments and performance-based payments, and direct the Contractor, in writing, to reinstate or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all material weaknesses as directed by the Contracting Officer's final determination.

- * * * * *
- 21. Amend section 252.242–7006 by—
- a. Revising the section heading, clause date, and paragraph (a);
- b. Revising and republishing paragraph (d); and
- c. Revising paragraph (e).

The revisions and republication read as follows:

252.242–7006 Accounting System Administration.

* * * * *

Accounting System Administration (Date)

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

Acceptable accounting system means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—

- (1) Applicable laws and regulations are complied with;
- (2) The accounting system and cost data are reliable;
- (3) Risk of misallocations and mischarges are minimized; and
- (4) Contract allocations and charges are consistent with billing procedures.

Accounting system means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in

compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

- (1) Probable; or
- (2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(d) *Material weaknesses.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

- (i) Remaining material weaknesses;
- (ii) The adequacy of any proposed or completed corrective action; and
- (iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer's final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

* * * * *

- 22. Amend section 252.244–7001—
- a. By revising the section heading and clause date;
- b. In paragraph (a) by—
- i. Adding in alphabetical order the definition of “Material weakness”; and
- ii. Removing the definition of “Significant deficiency”;
- c. By revising and republishing paragraph (d);

- d. By revising paragraph (e); and
 - e. In Alternate I—
 - i. By revising the clause date;
 - ii. In paragraph (a)—
 - A. By adding in alphabetical order the definition of “Material weakness”; and
 - B. By removing the definition of “Significant deficiency”;
 - iii. By revising and republishing paragraph (d); and
 - iv. By revising paragraph (e).
- The additions, revisions, and republications read as follows:

252.244–7001 Contractor Purchasing System Administration.

* * * * *

Contractor Purchasing System Administration—Basic (Date)

(a) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(d) *Material weaknesses.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor’s purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor’s response and notify the Contractor, in writing, of the Contracting Officer’s final determination concerning—

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer’s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the

final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses.

* * * * *

Alternate I. * * *

Contractor Purchasing System Administration—Alternate I (Date)

* * * * *

(a) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(d) *Material weaknesses.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weaknesses or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor’s purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor’s response and notify the Contractor, in writing, of the Contracting Officer’s final determination concerning—

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer’s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses.

* * * * *

■ 23. Amend section 252.245–7003—

- a. By revising the clause date;
 - b. In paragraph (a) by—
 - i. Adding in alphabetical order the definition of “Material weakness”; and
 - ii. Removing the definition of “Significant deficiency”;
 - c. By revising and republishing paragraph (d); and
 - d. By revising paragraph (e).
- The addition, revisions, and republication read as follows:

252.245–7003 Contractor Property Management System Administration.

* * * * *

Contractor Property Management System Administration (Date)

(a) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(d) *Material weaknesses.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weaknesses or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor’s property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor’s response and notify the Contractor, in writing, of the Contracting Officer’s final determination concerning—

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer’s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an

acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

* * * * *

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 9903 and 9904

Conformance of Cost Accounting Standards to Generally Accepted Accounting Principles for Operating Revenue and Lease Accounting

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board (CAS Board or the Board), is releasing this notice of proposed rulemaking (NPRM) to elicit public comments on proposed changes to the Cost Accounting Standards (CAS) to conform them with changes in Generally Accepted Accounting Principles (GAAP) related to operating revenue and lease accounting. This proposed rule follows issuance of an advanced notice of proposed rulemaking (ANPRM) 85 FR 70572 (November, 5, 2020), and a Staff Discussion Paper (SDP) 84 FR 9143 (March 13, 2019).

DATES: Comments must be in writing and must be received by August 26, 2024.

ADDRESSES: Respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to OMBCASB@omb.eop.gov. Be sure to include your name, title, organization, and reference case 2021-01. If you must submit by regular mail, please do so at Office of Federal Procurement Policy, 725 17th Street NW, Washington, DC 20503, ATTN: John L. McClung.

Privacy Act Statement: The CAS Board proposes the rule to elicit public views pursuant to 41 U.S.C. 1502. Submission of comments is voluntary. The information will be used to inform sound decision-making. Please note that all comments received in response to this document may be posted or released in their entirety, including any personal and business confidential information provided. Do not include any information you would not like to

be made publicly available. Additionally, the OMB System of Records Notice, OMB Public Input System of Records, OMB/INPUT/01, 88 FR 20913 (available at www.federalregister.gov/documents/2023/04/07/2023-07452/privacy-act-of-1974-system-of-records), includes a list of routine uses associated with the collection of this information.

FOR FURTHER INFORMATION CONTACT: John L. McClung, Manager, Cost Accounting Standards Board (telephone: 202-881-9758; email: john.l.mcclung2@omb.eop.gov).

SUPPLEMENTARY INFORMATION:

I. Background

Section 820 of Public Law 114-328 directed the Board to conform CAS to GAAP to the maximum extent practicable. In accordance with 41 U.S.C. 1502(c), the Board is required to consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard, prior to the promulgation of any new or revised CAS.

On March 13, 2019, the Board published a Staff Discussion Paper (SDP) (84 FR 9143) to solicit views with respect to the Board's statutory requirement to review and conform CAS requirements, where practicable, to GAAP. Respondents were invited to comment, among other things, on whether and how CAS may need to be modified to conform to changes to GAAP that occurred after a related CAS was promulgated. More specifically, the SDP asked what recommended actions, if any, the Board should take regarding the changes in GAAP for operating revenue and lease accounting rules. The Board recognized that since the initial promulgation of CAS 403 (38 FR 26680, Dec. 14, 1972), numerous changes have been made to GAAP. This growth in GAAP content presents opportunities to modify or eliminate overlapping CAS requirements where GAAP standards may be applied reasonably as a substitute for CAS. Furthermore, some changes in GAAP may create inconsistencies not contemplated during the initial promulgations of CAS requiring action by the Board.

Public comments received on the SDP, amongst other things, urged the Board to prioritize efforts to address changes in GAAP related to operating revenue and lease accounting. In response to these comments, the Board issued an advanced notice of proposed rulemaking (ANPRM) on November 5,

2020 (85 FR 70572) that described changes to the CAS that, if adopted, would (i) align CAS with GAAP on the handling of operating revenue and (ii) clarify CAS definitions to make clear that GAAP changes on lease accounting are not recognized for CAS purposes.

This NPRM addresses the public comments received in response to the ANPRM and also reflects research accomplished by the Board in response to the ANPRM. The NPRM is issued by the Board in accordance with the requirements of 41 U.S.C. 1502(c).

II. Operating Revenue

A. *Overview.* The definitions of operating revenue in CAS and revenue in GAAP are currently different. The GAAP definition of "revenue," found at Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 606-10-20, reads as follows:

Inflows or other enhancements of assets of an entity or settlements of its liabilities (or a combination of both) from delivering or producing goods, rendering services, or other activities that constitute the entity's ongoing major or central operations.

The CAS 403-30(a)(3) definition of "operating revenue" reads as follows:

. . . amounts accrued or charge[d] to customers, clients, and tenants, for the sale of products manufactured or purchased for resale, for services, and for rentals of property held primarily for leasing to others. It includes both reimbursable costs and fees under cost-type contracts and percentage-of-completion sales accruals except that it includes only the fee for management contracts under which the contractor essentially acts as an agent of the Government in the erection or operation of Government-owned facilities. It excludes incidental interest, dividends, royalty, and rental income, and proceeds from the sale of assets used in the business.

In the ANPRM, the Board stated its belief that the definition in GAAP is essentially equivalent to the CAS, but noted that when a contractor essentially acts as an agent of the Government in the erection or operation of Government-owned facilities, CAS limits the measurement of operating revenue to only the fee earned for managing the contract. The Board also noted that GAAP does not provide such a limitation. The ANPRM included language that, if adopted, would remove the definition of operating revenue from CAS 403 and rely on the definition of revenue in GAAP, but retain the CAS 403 criterion regarding only utilizing the "fee for management contracts under which the contractor essentially acts as an agent of the Government in the erection or operation of