

evaluating a contractor's past performance, and establish as a contract administration function the providing of support to program offices and buying activities in precontractual efforts leading to a solicitation or award.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 15, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. R.G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D015 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS Parts 207, 209, 215, and 242 to implement the recommendations of the Department of Defense Contract Administration Services Reform Process Action Team concerning involvement of contract administration activities early in the acquisition process.

B. Regulatory Flexibility Act

The proposed changes to the DFARS may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the changes specify that costs or savings related to contract administration may be considered when evaluating a contractor's past performance. Increased use of this evaluation factor is expected to have a beneficial impact on contractors with good past performance and a negative impact on contractors with poor past performance. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address stated herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D015 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose any new recordkeeping, information collection

requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 207, 209, 215, and 242

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Parts 207, 209, 215, and 242 be amended as follows:

PART 207—ACQUISITION PLANS

1. The authority citation for 48 CFR Parts 207, 209, 215, and 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 207.104 is added to read as follows:

207.104 General procedures.

(b) The planner should forward the requirements information to the contract administration organization when assistance in identification of potential sources of supply is necessary, when an existing contract is being modified or resolicited, or when contract administration resource requirements will be affected.

3. Section 207.105 is amended by revising the introductory text and adding paragraph (b)(17)(D) to read as follows:

207.105 Contents of written acquisition plans.

For acquisitions covered by 207.103(c)(i) (A) and (B), correlate the plan to the DoD Future Years Defense Program, applicable budget submissions, and the decision coordinating paper/program memorandum, as appropriate. It is incumbent upon the planner to coordinate the plan with all those who have a responsibility for the development, management, or administration of the acquisition. The acquisition plan should be provided to the contract administration organization to facilitate resource allocation and planning for the evaluation, identification, and management of contractor performance risk.

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(D) *Contract administration.* Discuss the level of Government administration anticipated or currently performed and any change proposed by the contract administration office.

(b) * * *
(17) * * *

PART 209—RESPONSIBLE PROSPECTIVE CONTRACTORS

4. Section 209.103 is amended by adding paragraph (c) to read as follows:

209.103 policy.

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(c) The additional cost of contract administration and audit due to a contractor's performance risk may be considered in evaluating the contractor's price.

PART 215—CONTRACTING BY NEGOTIATION

5. Section 215.605 is amended by adding immediately before paragraph (c)) paragraph (b)(S-70) to read as follows:

215.605 Evaluation factors.

(b) * * *

(S-70) The costs or savings related to contract administration may be considered when the contractor's past performance or performance risk is likely to result in significant costs or savings.

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PART 242—CONTRACT ADMINISTRATION

6. Section 242.302 is amended by adding paragraph (a)(67) to read as follows:

242.302 Contract administration functions.

(a) * * *

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

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48 CFR Part 215

[DFARS Case 95-D006]

Defense Federal Acquisition Supplement Contracting by Negotiation

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Defense has decided to withdraw a proposed rule published on March 24, 1995 (60 FR 15528). The rule proposed DFARS revisions to allow the head of the contracting activity to determine the appropriate level for approval of second and subsequent rounds of best and final offers for competitive negotiated acquisitions under other than formal source selection. Public comments

received in response to the proposed rule indicated that industry did not support the proposed DFARS revisions.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Melissa D. Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062, (703) 602-0131.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

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48 CFR Parts 242 and 252

Defense Federal Acquisition Regulation Supplement; Material Management and Accounting Systems (MMAS)

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to raise MMAS disclosure, demonstration, and maintenance threshold requirements; clarify circumstances under which contractors will be subject to MMAS disclosure, demonstration, and maintenance; and clarify MMAS provisions regarding material transfer methodologies and approved loan/pay-back techniques.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 15, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. R. G. Laysen, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D029 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Laysen, Telephone (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense recently commissioned a study to assess the effect of DoD regulations on the defense industry, measure the impact of those regulations on defense industry costs, and identify key cost drivers and describe their impact on contractor business processes. The material

management and accounting system (MMAS) standards were among the top ten cost drivers identified in the study report. A working group was formed to evaluate the related findings and determine what actions, if any, might be appropriate to reduce the MMAS cost premium. One MMAS finding pertained to dollar thresholds that determine when MMAS requirements apply to defense contractors, and to criteria that determine the degree of MMAS disclosure and demonstration required. The working group determined that MMAS thresholds appeared to be outdated due to inflation and that disclosure, demonstration, and maintenance criteria could be more objective. Another finding pertained to the language at DFARS 252.242-7004(f)(7) regarding a loan/pay-back technique for material transfers, which appeared susceptible to misinterpretation. This proposed rule implements the working group's recommendations pertaining to MMAS requirements.

B. Regulatory Flexibility Act

The proposed rule is not expected 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.* Although the proposed rule applies to small business under certain circumstances, only large businesses meeting certain dollar thresholds are required to demonstrate the degree to which their material management and accounting systems conform to the standards contained in the proposed rule. An Initial Regulatory Flexibility Analysis, therefore, has not been performed. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D029 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 242 and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 242 and 252 are proposed to be amended as follows:

PART 242—CONTRACT ADMINISTRATION

1. The authority citation for Parts 242 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 242.7202 is amended by revising paragraph (d) to read as follows:

242.7202 Policy.

* * * * *

(d) Conforms to the standards at 252.242-7004(f) when the contractor has cost-reimbursement of fixed-price contracts greater than the simplified acquisition threshold in FAR part 13 with progress of other contract financing provisions, except when all of the contracts and subcontracts are awarded under the set-aside or Section 8(a) procedures of FAR part 19.

3. Section 242.7203 is revised to read as follows:

242.7203 MMAS disclosure, demonstration, and maintenance requirements.

(a) A large business contractor is subject to MMAS disclosure, demonstration, and maintenance if in its preceding fiscal year the contractor received DoD prime contracts or subcontracts (including modifications) totaling—

- (1) \$70 million or more; or
- (2) \$30 million or more (but less than \$70 million), and the contracting officer determines it to be in the best interests of the Government (e.g., contractor disclosure, demonstration, or other activities indicate significant MMAS problems exist).

(b) After the administrative contracting officer determines the contractor's MMAS is adequate (see 242.7204(b)), written disclosure will not be required for the next MMAS review unless the contractor's policies, procedures, or practices have changed in the interim period(s). Similarly, once the contractor demonstrates that its MMAS contains no significant deficiencies, demonstration requirements for subsequent reviews may be satisfied if internal audits are reasonably current and contain sufficient transaction tests to demonstrate MMAS compliance with each standard.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.242-7004 is amended by revising paragraphs (f)(7)(i) and (f)(7)(iii) introductory text to read as follows: