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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 237

RIN 0750-AI29

Defense Federal Acquisition Regulation Supplement: Electronic Copies of Contractual Documents (DFARS Case 2012-D056)

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 state the policy that the Electronic Document Access (EDA) system is DoD's online repository and distribution tool for contract documents and contract data, require internal control procedures for contract document and data verification in EDA, and remove outmoded language that is not consistent with electronic document processes.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]** to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2012-D056, using any of the following methods:

o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2012-D056" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D056." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D056" on your document.

o Email: osd.dfars@mail.mil. Include DFARS Case 2012-D056 in the subject line of the message.

o Fax: 571-372-6094

o Mail: Defense Acquisition Regulations System, Attn: Jennifer Hawes, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Jennifer Hawes, telephone 571-372-6115.

SUPPLEMENTARY INFORMATION:

I. Background

DoD utilizes the Electronic Document Access (EDA) system for the distribution and sharing of contracts and contract data. The Defense Electronic Business Program Office established business rules for the EDA system, which became effective November 5, 2001. In November 2009, DoD instructed its contracting officers to register in EDA, and use of EDA is now the standard business practice employed by DoD contracting offices. A review of DFARS coverage related to contract files and contract distribution resulted in recommendations to remove language that was structured to support processes for and distribution of paper files and paper copies. Similarly, DFARS language is required to reflect current electronic processes supported by EDA.

II. Discussion and Analysis

This rule proposes to amend DFARS 204.270, Electronic Document Access, to effect the following clarifications and changes:

- State as policy that EDA, an online repository for contractual instruments and supporting documents, is DoD's primary tool for electronic distribution of contract documents and contract data.
- Provide that agencies have certain responsibilities when posting documents to EDA, to include internal control procedures that ensure electronic copies of contract documents and data in EDA are accurate representations of original documents.

The rule also proposes revisions to DFARS 204.802, Contract Files. The language in this section, which addresses contract file requirements for authenticating and conforming paper documents and copies, is being removed as it is outdated. A new paragraph is being added providing that electronic documents posted to the EDA system are a part of the contract file.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule 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 the rule is only updating the regulation to reflect current electronic distribution practices in lieu of paper distribution. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD utilizes the Electronic Document Access (EDA) system for the distribution and sharing of contracts and contract data. The Defense Electronic Business Program Office established business rules for the EDA system, which became effective November 5, 2001. In November 2009, DoD instructed its contracting officers to register in EDA, and use of EDA is now a standard practice of DoD contracting offices. A review of the DFARS language related to contract files and contract distribution resulted in recommendations to remove coverage that was structured to support processes for and distribution of paper files and paper copies. Additionally, it was recognized that coverage was needed to reflect current electronic processes supported by EDA.

This rule proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add language to DFARS 204.270, Electronic Document Access, to effect the following clarifications and changes:

- State as policy that EDA, an online repository for contractual instruments and supporting documents, is DoD's primary tool

for electronic distribution of contract documents and contract data.

- Provide that agencies have certain responsibilities when posting documents to EDA, to include internal control procedures that ensure electronic copies of contract documents and data in EDA are accurate representations of original documents.
- The rule also proposes revisions to DFARS 204.802, Contract Files. The language in this section, which addresses contract file requirements for authenticating and conforming paper documents and copies, is being removed as it is outdated. A new paragraph is being added providing that electronic documents posted to the EDA system are a part of the contract file.

Use of EDA has been a standard business practice employed by DoD contracting offices to distribute electronic copies of contractual documents for several years. Therefore, this proposed rule is expected to have little, if any, impact on small entities. The rule proposes to update the DFARS to reflect policy regarding electronic posting and distribution of contractual instruments and to remove outdated coverage applicable to paper copies of contractual documents. As such, this rule primarily affects internal Government distribution procedures.

This rule does not require any reporting or recording keeping. The rule does not duplicate, overlap, or conflict with any other Federal rule. There are no practical alternatives that will accomplish the objectives of this proposed rule.

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

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2012-D056), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204 and 237

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 237 are proposed to be amended as follows:

1. The authority citation for parts 204 and 237 continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

2. Add sections 204.270-1 and 204.270-2 to subpart 204.2 to read as follows:

204.270-1 Policy.

(a) The Electronic Document Access (EDA) system, an online repository for contractual instruments and supporting documents, is DoD's primary tool for electronic distribution of contract documents and contract data.

(b) Agencies are responsible for ensuring the following when posting documents, including contractual instruments, to EDA—

(1) The timely distribution of documents; and

(2) That internal controls are in place to ensure that—

(i) The electronic version of a contract document in EDA is an accurate representation of the original contract document; and

(ii) The contract data in EDA is an accurate representation of the underlying contract.

204.270-2 Procedures.

The procedures at PGI 204.270-2 provide details on how to record the results of data verification in EDA. When these procedures are followed, contract documents in EDA are an accurate representation

of the original contract document and therefore may be used for audit purposes.

3. Revise section 204.802 to read as follows:

204.802 Contract files.

(a) Any document posted to the Electronic Document Access (EDA) system is part of the contract file and is accessible by multiple parties, including the contractor. Inclusion of any document in EDA other than contracts, modifications, and orders is optional.

204.805 [Amended]

4. Amend section 204.805 by removing "official contract files" and adding "contract files" in its place.

PART 237—SERVICE CONTRACTING

5. Revise section 237.172 to read as follows:

237.172 Service contracts surveillance.

Ensure that quality assurance surveillance plans are prepared in conjunction with the preparation of the statement of work or statement of objectives for solicitations and contracts for services. These plans should be tailored to address the performance risks inherent in the specific contract type and the work effort addressed by the contract. (See FAR subpart 46.4.) Retain quality assurance surveillance plans in the contract file. See <http://sam.dau.mil>, Step Four—Requirements

Definition, for examples of quality assurance surveillance plans.

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