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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

RIN 0750-AI37

**Defense Federal Acquisition Regulation Supplement: Multiyear
Contracts—Statutory References and Cancellation Ceiling
Threshold (DFARS Case 2014-D019)**

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update the cancellation ceiling threshold for multiyear contracts and to correct statutory references.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 79 FR 65331 on September 19, 2014, to amend the DFARS regarding multiyear contracts to update the cancellation ceiling threshold at DFARS 217.170(e)(1)(iv) for consistency with the Federal Acquisition Regulation and correct statutory references. The rule also corrects references to 10 U.S.C. 2306b, 10 U.S.C. 2306c, and section 8008a of Pub. L. 105-56 throughout DFARS subpart 217.1.

No public comments were submitted in response to the proposed rule.

II. Discussion

There are only minor editorial changes in the final rule from the proposed rule. Cross references contained within some paragraphs required revision since several paragraphs were redesignated and renumbered due to relocation of text or the addition of new text.

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

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

This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) regarding multiyear contracts to ensure consistency with the Federal Acquisition Regulation (FAR) and the underlying statutes. The objective of this rule is to increase the cancellation ceiling threshold at DFARS 217.170(e)(1)(iv) from \$100 million to \$125 million to ensure consistency with the threshold at FAR 17.108(b).

In addition, this rule corrects references to 10 U.S.C. 2306b, 10 U.S.C. 2306c, and section 8008a of Pub. L. 105-56 throughout DFARS subpart 217.1 and makes the following clarifications:

- Requests for increased funding or reprogramming for procurement of a major system is relocated under DFARS 217.172(j) since it is in reference to a type of multiyear supply contract.

- A multiyear contract for supplies in excess of \$500 million must be specifically authorized by law in an Act other than an appropriations Act in accordance with 10 U.S.C. 2306b(i) (3).
- A multiyear procurement contract for any system (or component thereof) with a value greater than \$500 million must be specifically authorized in an appropriations act in accordance with 10 U.S.C. 2306b(1) (3).

No comments were received from the public in response to initial regulatory flexibility analysis published in the proposed rule.

Small businesses will not be affected by this rule. The rule will only impact procedures and authorities internal to the Government for multiyear contracts that require a cancellation ceiling up to \$125 million or multiyear contracts for supplies with a value in excess of \$500 million.

The rule imposes no reporting, recordkeeping, or other information collection requirements.

V. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 217

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 217 is amended as follows:

PART 217— SPECIAL CONTRACTING METHODS

1. The authority citation for 48 CFR part 217 continues to read as follows:

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

217.103 [Amended]

2. Amend section 217.103, in the definition for "Military installation," by removing "(10 U.S.C. 2801(c)(2))" and adding "(10 U.S.C. 2801(c)(4))" in its place.

3. Amend section 217.170 by—

a. Removing paragraph (b);

b. Redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively;

c. Revising newly redesignated paragraphs (d)(1)(ii), (iii), and (iv);

d. In newly redesignated paragraph (d)(2), removing "(e)(1)(i)" and adding "(d)(1)(i)" in its place;

e. In newly redesignated paragraph (d)(3), removing "(e)(2)" and adding "(d)(2)" in its place;

f. In newly redesignated paragraph (d)(4), removing "(e)(1)" and adding "(d)(1)" in its place;

g. In newly redesignated paragraph (d)(5) introductory text, removing "\$100 million" and adding "\$125 million" in its place; and

h. In newly redesignated paragraph (d)(5)(i) introductory text, removing "(e)(1)" and adding "(d)(1)" in its place.

The revisions read as follows:

217.170 General.

* * * * *

(d)(1) * * *

(ii) Employ economic order quantity procurement in excess of \$20 million in any one year of the contract (see 10 U.S.C. 2306b(1)(1)(B)(i)(I) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts);

(iii) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (see 10 U.S.C. 2306b(1)(1)(B)(ii) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts); or

(iv) Include a cancellation ceiling in excess of \$125 million (see 10 U.S.C. 2306c(d)(4) and 10 U.S.C. 2306b(g)(1)).

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217.171 [Amended]

4. Amend section 217.171 by—

- a. In paragraph (a) introductory text, removing "(10 U.S.C. 2306c)" and adding "(10 U.S.C. 2306c(a))" in its place;
 - b. In paragraph (a) (5) (iii), adding "(10 U.S.C. 2306c(b))" at the end of the sentence, before the period;
 - c. In paragraph (b) (3), adding "(10 U.S.C. 2306c(c))" at the end of the sentence, before the period.
 - d. In paragraph (c) (3), adding "(10 U.S.C. 2306c(a))" at the end of the sentence, before the period; and
 - e. In paragraph (d), removing "(10 U.S.C. 2306(c))" and adding "(10 U.S.C. 2306c(d) (2))" in its place.
5. Amend section 217.172 by—
- a. Revising paragraph (c);
 - b. Redesignating paragraphs (d) through (h) as paragraphs (e) through (i), respectively;
 - c. Adding a new paragraph (d);
 - d. In newly redesignated paragraph (f) (1), adding a parenthesis to close the parenthetical phrase "(when entered into or extended)" and removing "(10 U.S.C. 2306b(1) (5))" and adding "(10 U.S.C. 2306b(1) (5))" in its place;
 - e. In newly redesignated paragraph (f) (2)—
 - i. Removing "(g) (2) (i)" and adding "(h) (2) (i)" in its place;
 - ii. Removing "(g) (2)" and adding "(h) (2)" in its place; and
 - iii. Removing the parenthetical reference "(10 U.S.C. 2306b(a) (1) (7))";

- f. In newly redesignated paragraph (g) (1), adding the parenthetical reference "(10 U.S.C. 2306b(h) (1))" before the semicolon;
- g. In newly redesignated paragraph (g) (2) --
 - i. Removing "217.172(g) (3) and (4)" and adding "paragraphs (h) (3) and (4) of this section" in its place; and
 - ii. Adding the parenthetical reference "(10 U.S.C. 2306b(h) (2))" at the end of the first sentence, before the period;
- h. In newly redesignated paragraph (h) (2) introductory text--
 - i. Removing "(g) (2) (i)" and adding "(h) (2) (i)" in its place; and
 - ii. Removing the word "are";
- i. In newly redesignated paragraph (h) (2) (ii), removing "(g) (2) (i)" and adding "(h) (2) (i)" in its place;
- j. In newly redesignated paragraph (h) (2) (vii) --
 - i. Adding the parenthetical reference "(10 U.S.C. 2306b(i) (1) (G))" at the end of the first sentence before the period, and removing the parenthetical reference "(10 U.S.C. 2306b(i) (1) (G))" from the end of the second sentence; and
 - ii. Removing "USD(C) (P/B)" and adding "OUSD(C) (P/B)" in its place;

- k. In newly redesignated paragraph (h) (2) (viii) introductory text, removing "USD(C) (P/B)" and adding "OUSD(C) (P/B)" in its place;
- l. In newly redesignated paragraph (h) (5), removing "(g) (2)" and adding "(h) (2)" in its place;
- m. In newly redesignated paragraph (h) (6)–
 - i. Removing "(g) (2)" and adding "(h) (2)" in its place; and
 - ii. Removing "(g) (5)" and adding "(h) (5)" in its place;
- n. In newly redesignated paragraph (h) (8) introductory text, removing the parenthetical reference "(10 U.S.C. 2306b(i) (2))"; and
- o. Adding a new paragraph (j).

The revisions and additions read as follows:

217.172 Multiyear contracts for supplies.

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(c) Multiyear contracts in amounts exceeding \$500 million must be specifically authorized by law in an act other than an appropriations act (10 U.S.C. 2306b(i) (3)).

(d) The head of the agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed \$500 million unless authority for the contract is specifically provided in an appropriations act (10 U.S.C. 2306b(1) (3)).

* * * * *

(j) Any requests for increased funding or reprogramming for procurement of a major system under a multiyear contract shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary of Defense under 217.172(h) (2) (10 U.S.C. 2306b(m)).

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