



(Billing Code 5001-06)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 204 and 237**

**[Docket No. DARS 2015-0009]**

**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:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to establish that the Electronic Data Access system is the primary tool for distributing contracts and contract data and to provide internal control procedures for data verification to ensure contract documents in the Electronic Data Access system are accurate representations of original documents. This rule also removes outmoded language that is not consistent with electronic document processes.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Tresa Sullivan, telephone 571-372-6089.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule in the Federal Register at 80 FR 4846 on January 29, 2015, to establish that the Electronic Document Access (EDA) system is the primary tool for distributing contracts and contract data and to provide internal control procedures for data verification to ensure contract documents in EDA are accurate representations of original documents; and remove outmoded language that does not resonate with electronic document processes. No respondents submitted public comments in response to the proposed rule.

**II. Discussion and Analysis**

There are some minor editorial changes made from the proposed rule in the final rule to clarify the distribution of signed contract copies to contractors, uploading of certain contract attachments into EDA, and what constitutes an original signature. Accordingly, paragraph (a) is added to DFARS 204.201 to clarify that contracting officers shall distribute one signed copy or reproduction of the signed contract to the contractor in lieu of the requirements at FAR 4.201(a). DFARS 204.270-1, paragraph (a), and 204.802, paragraph (a), now include statements that contract attachments that are classified, are

too sensitive for widespread distribution, or cannot be practicably converted to electronic format should be provided by separate cover and not uploaded into EDA. Additionally, section 204.802, paragraph (f) is added to state that a photocopy, facsimile, electronic, mechanically-applied and printed signature, seal, and date are considered to be an original signature, seal, and date.

### **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 below. This rule is required to update guidance in the Defense Federal Acquisition Regulation Supplement (DFARS). 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 and to add coverage reflecting current electronic processes.

This final rule amends the DFARS to make the following changes:

- DFARS 204.201, paragraph (a), clarifies that contracting officers shall distribute one signed copy or reproduction of the signed contract to the contractor in lieu of the requirements at FAR 4.201(a).
- DFARS 204.270, Electronic Document Access, states the policy that the Electronic Data Access (EDA) System, an online repository for contractual instruments and supporting documents, is DoD's primary tool for electronic distribution of contractual documents. The rule provides that contract attachments that are classified, are too sensitive for widespread distribution, or cannot be practicably converted to electronic format should be provided by separate cover and not uploaded into EDA. This section also provides policy 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.

- DFARS 204.802, Contract Files, is revised. 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 (a) is being added, providing that electronic documents posted to the EDA system are a part of the contract file. Additionally, paragraph (f) is added to state that a photocopy, facsimile, electronic, mechanically-applied and printed signature, seal, and date are considered to be an original signature, seal, and date.

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

There will be little, if any, impact on small entities as this rule primarily affects procedures for internal Government electronic posting and distribution of contractual documents.

This rule does not require any reporting or recordkeeping, and no alternatives were identified that will accomplish the objectives of the rule.

## **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.

**Jennifer L. Hawes,**

Editor, Defense Acquisition Regulations System.

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

1. The authority citation for 48 CFR 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. Amend section 204.201 by adding paragraph (a) to read as follows:

**204.201 Procedures.**

\* \* \* \* \*

(a) In lieu of the requirement at FAR 4.201 (a), contracting officers shall distribute one signed copy or reproduction of the signed contract to the contractor.

**204.270 [Amended]**

3. Amend section 204.270 by removing the text.
4. 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. Contract attachments shall be uploaded to EDA, except for contract attachments that are classified, are too sensitive for widespread distribution (e.g., personally identifiable information and Privacy Act and Health Insurance Portability and Accountability Act, or cannot be practicably converted to electronic format (e.g., samples, drawings, and models). Section J (or similar location when the Uniform Contract Format is not used) shall include the annotation "provided under separate cover" for any attachment not uploaded to EDA.

(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 contract; 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 contract and therefore may be used for audit purposes.

5. 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. Do not include in EDA contract documents that are classified, too sensitive for widespread distribution (e.g., personally identifiable information and Privacy Act and Health Insurance Portability and Accountability Act), or attachments that cannot be practicably converted to electronic format (e.g., samples, drawings, and models). Inclusion of any document in EDA other than contracts, modifications, and orders is optional.

(f) A photocopy, facsimile, electronic, mechanically-applied and printed signature, seal, and date are considered to be an original signature, seal, and date.

**204.805 [Amended]**

6. Amend section 204.805, paragraph (1), by removing "official contract files" and adding "contract files" in its place.

**PART 237—SERVICE CONTRACTING**

7. 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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