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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 232**

**[Docket DARS-2016-0009]**

**RIN 0750-AI90**

**Defense Federal Acquisition Regulation Supplement: Contract Financing (DFARS Case 2015-D026)**

**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) by providing that contracting officers are not required to further justify a decision to provide customary contract financing, other than loan guarantees and advance payments identified in FAR part 32, for certain fixed-price contracts.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, telephone 571-372-6099.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule in the Federal Register at 81 FR 42607 on June 30, 2016, to revise the DFARS regarding the use of customary contract financing, other than loan guarantees and advance payments identified in FAR part 32, on fixed-price contracts with a period of performance in excess of one year that meet the dollar thresholds established in FAR 32.104(d). DoD has determined that the use of such customary contract financing provides improved cash flow as an incentive for commercial companies to do business with DoD, is in the Department's best interest, and requires no further justification of its use.

## **II. Discussion and Analysis**

No public comments were submitted in response to the proposed rule. Therefore, there are no changes from the proposed rule made in the final rule.

## **III. Applicability to Contracts at or Below the simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This final rule only provides DoD policy regarding providing contract financing for certain fixed-priced contracts. The rule does not add any new provisions or clauses or impact any existing provisions or clauses.

## **IV. 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.

#### **V. 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:

The objective of the rule is to clarify that the use of certain customary contract financing does not require further justification, as it has been determined to be in DoD's best interest for fixed-price contracts with a period of performance in excess of one year that meet the dollar thresholds in FAR 32.104(d).

DoD does not expect this final 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. This rule only changes processes that are internal to the Government and does not have any impact on small entities.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

There is no change to reporting or recordkeeping as a result of this rule.

There are no known significant alternative approaches to the rule that would meet the requirements.

#### **VI. 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 232**

Government procurement.

**Jennifer L. Hawes,**

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 232 is amended as follows:

#### **PART 232—CONTRACT FINANCING**

1. The authority citation for part 232 continues to read as follows:

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

2. Add section 232.104 to subpart 232.1 to read as follows:

**232.104 Providing contract financing.**

For fixed-price contracts with a period of performance in excess of a year that meet the dollar thresholds established in FAR 32.104(d), and for solicitations expected to result in such contracts, in lieu of the requirement at FAR 32.104(d)(1)(ii) for the contractor to demonstrate actual financial need or the unavailability of private financing, DoD has determined that—

(1) The use of customary contract financing (see FAR 32.113), other than loan guarantees and advance payments, is in DoD's best interest; and

(2) Further justification of its use in individual acquisitions is unnecessary.

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