



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 204, 232, and 252**

**[Docket DARS-2019-0047]**

**RIN 0750-AJ52**

**Defense Federal Acquisition Regulation Supplement: Expediting Contract Closeout (DFARS Case 2017-D042)**

**AGENCY:** Defense Acquisition Regulation System, Department of Defense (DoD)

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to provide for expedited contract closeout through a waiver by the contractor and the Government of entitlement to any residual dollar amounts that are due to either party at the time of final contract closeout. The changes are necessary to establish an expedited contract closeout agreement that will save administrative costs for both the contractor and the Government.

**DATES:** Comments on the proposed rule should be submitted in writing using one of the methods shown in ADDRESSES 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 in response to DFARS CASE 2017-D042 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via Federal Rulemaking portal by entering "DFARS Case 2017-D042" under the heading "Enter keyword of ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2017-D042." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2017-D042" on your attached document.

- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2017-D042 in the subject line of the message.

- *Fax:* 571-372-6094.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Bass, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulation.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://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:** Ms. Kimberly Bass, telephone 571-372-6174.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to add a new DFARS contract clause that allows for an expedited contract closeout agreement between the contractor and the Government that will save administrative costs for both the contractor and the Government. The clause will be used when the contracting officer intends to expedite the contract closeout process by having the contractor and the Government waive entitlement to any residual dollar amounts up to \$1,000 at the time of final contract closeout. The objective of the rule is to reduce the amount of time and money expended on reconciling small dollar residual dollar amounts in order to close out contracts.

**II. Discussion and Analysis**

The proposed DFARS clause 252.204-70XX, Expediting Contract Closeout, provides an agreement by the Government and contractor to waive any entitlement that otherwise might accrue to either party in any amount of \$1,000 or less at the time of final contract closeout. The new clause will be prescribed at DFARS 204.804-70 for use in solicitations and contracts, including those under FAR part 12 procedures for acquisition of commercial

items, when the contracting officer intends to expedite contract closeout through such a waiver.

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

This rule proposes to create a new clause DFARS 252.204-70XX, Expediting Contract Closeout. DoD plans to apply this clause to solicitations and contracts for the acquisition of commercial items, including commercially available off-the-shelf items, and to acquisitions valued at or below the simplified acquisition threshold. These categories of acquisitions are those most likely to benefit from expedited contract closeout.

**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, or reducing costs, or 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. Executive Order 13771**

This rule is not expected to be subject to E.O. 13771, because this rule is not a significant regulatory action.

**VI. 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. An initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

The Department of Defense (DoD) proposes amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new contract clause 252.204-70XX, Expediting Contract Closeout, to expedite contract closeout on contracts with a residual dollar amount of \$1,000 or less at the time of final closeout.

The objective of the proposed clause is to facilitate expedited contract closeout and avoid excessive administrative costs for both the contractor and the Government to reconcile relatively small residual dollar amounts in order to close out a contract.

The proposed rule will apply to small entities that have been or will be awarded contracts, including those under FAR part 12 procedures for the acquisition of commercial items. DoD is

unable to estimate the total number of small entities that have DoD contracts with a residual amount of \$1,000 or less; however, the Defense Contract Management Agency (DCMA) was able to provide information on contracts administered by DCMA.

According to data available in Mechanization of Contract Administration Services/Shared Data Warehouse as of June 2019, there were 11,831 flexibly-priced contracts with residual dollar amounts of \$1,000 or less, of which 3,507 contracts were awarded to small entities. The average residual amount on these contracts was \$70.

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).

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known, significant, alternative approaches to the proposed rule that would meet the requirements of the 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 2017-D042), in correspondence.

#### **VIII. 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, 212, and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 204, 212, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

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

#### **PART 204—ADMINISTRATIVE AND INFORMATION MATTERS**

2. Add section 204.804-70 to read as follows:

#### **204.804-70 Contract clause.**

Use the clause at 252.204-70XX, Expediting Contract Closeout, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the contracting officer intends to

expedite contract closeout through the waiver of entitlement to any residual dollar amounts by the contractor and the Government at the time of final contract closeout.

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

3. Amend section 212.301 by adding paragraph (f)(ii)(K) to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) \* \* \*

(ii) \* \* \*

(K) Use the clause at 252.204-70XX, Expediting Contract Closeout, as prescribed in 204.804-70.

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Add section 252.204-70XX to read as follows:

**252.204-70XX Expediting contract closeout.**

As prescribed in 204.804-70, use the following clause:

**EXPEDITING CONTRACT CLOSEOUT (DATE)**

(a) Both the Government and the Contractor agree to waive any entitlement that otherwise might accrue to either party in any residual dollar amount of \$1,000 or less at the time of final contract closeout.

(b) A residual dollar amount includes all money owed to either party at the end of the contract and as a result of the

contract, excluding amounts connected in any way with taxation or a violation of law or regulation.

(c) For purposes of determining residual dollar amounts, offsets (for example across multiple contracts or orders) may be considered to the extent permitted by law.

(End of clause)

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