

## 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 204

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 204 is amended to read as follows:

### PART 204—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 204 continues to read as follows:

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

■ 2. Section 204.804 is revised to read as follows:

#### 204.804 Closeout of contract files.

(1) Contracting officers shall close out contracts in accordance with the procedures at PGI 204.804. The closeout date for file purposes shall be determined and documented by the procuring contracting officer.

(2) The head of the contracting activity shall assign the highest priority to closeout of contracts awarded for performance in a contingency area. Heads of contracting activities must monitor and assess on a regular basis the progress of contingency contract closeout activities and take appropriate steps if a backlog occurs. For guidance on the planning and execution of closing out such contracts, see PGI 207.105(b)(20)(C)(8) and PGI 225.7404(e).

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 204 and 243

RIN 0750-AH56

#### Defense Federal Acquisition Regulation Supplement: Order of Application for Modifications (DFARS Case 2012-D002)

**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 an order for application of contract modifications to resolve any potential conflicts that may arise from multiple modifications with the same effective date.

**DATES:** *Effective Date:* May 22, 2012.

**FOR FURTHER INFORMATION CONTACT:** Dr. Laura Welsh, telephone 571-372-6091.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published a proposed rule in the **Federal Register** at 77 FR 2679 on January 19, 2012, to establish an order for application of contract modifications. DFARS subpart 204.70, Uniform Procurement Instrument Identification Numbers, prescribes numbering procedures for contract modifications and the Federal Acquisition Regulation (FAR) part 43.1, General, prescribes rules for determining the effective date of contract modifications. There are no rules to describe in what order to apply modifications to determine the actual content of a resulting modified contract. In order to determine the sequence of modifications to a contract or order, a method for determining the order of application for modifications is needed to resolve any conflict arising from multiple modifications with the same effective date. Therefore, this final rule adds DFARS text at 204.7007, Order of Application for Modifications, to resolve any potential conflict in these circumstances. One respondent submitted a public comment in response to the proposed rule.

##### II. Discussion and Analysis of the Public Comment

DoD considered the public comment in the development of the final rule, which is discussed as follows.

*Comment:* A respondent suggested that a cross-reference to the proposed DFARS 204.7007 language be placed within DFARS part 243, Contract Modifications, as the rule addresses contract modifications.

*Response:* In response to the respondent's comment, a cross-reference to DFARS 204.7007 is added at DFARS 243.172. No other changes were made to the proposed rule.

##### 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 has prepared a final regulatory flexibility analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule finalizes a proposed amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) which was published on January 19, 2012. DFARS subpart 204.70, Uniform Procurement Instrument Identification Numbers, prescribes numbering procedures for contract modifications, and Federal Acquisition Regulation (FAR) subpart 43.1, General, prescribes guidelines for determining the effective date. There are no rules to describe in what order to apply modifications to determine the actual content of a resulting modified contract.

The objective of the rule is to provide a set of rules to the contracting officer to resolve any potential conflicts from multiple modifications with the same effective date.

There were no public comments in response to the initial regulatory flexibility analysis.

DoD received no comments by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

The changes required to the DFARS by this case only affect the internal operating processes of DoD by establishing an order of application for contract modifications. These changes are not expected to have an economic impact on contractors.

This rule does not impose any new reporting or recordkeeping requirements.

The alternative to this rule is to continue relying on DFARS subpart 204.70, which prescribes numbering procedures for contract modifications, and FAR subpart 43.1, which provides guidelines for determining the effective date. However, the cited text does not provide a clear structured path to ensure no ambiguity arises when determining in what order to apply modifications.

There is no significant economic impact on small entities.

#### 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 243

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 243 are amended as follows:

#### PART 204—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 204 continues to read as follows:

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

■ 2. Section 204.7007 is added to read as follows:

##### 204.7007 Order of application for modifications.

(a) Circumstances may exist in which the numeric order of the modifications to a contract is not the order in which the changes to the contract actually take effect.

(b) In order to determine the sequence of modifications to a contract or order, the modifications will be applied in the following order:

(1) Modifications will be applied in order of the effective date on the modification;

(2) In the event of two or more modifications with the same effective date, modifications will be applied in signature date order;

(3) In the event of two or more modifications with the same effective date and the same signature date, procuring contracting office modifications will be applied in numeric order, followed by contract administration office modifications in numeric order.

#### PART 243—CONTRACT MODIFICATIONS

■ 3. The authority citation for 48 CFR part 243 is revised to read as follows:

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

■ 4. Section 243.172 is added to read as follows:

#### 243.172 Application of modifications.

Follow the procedures in 204.7007 for determining the sequence for application of modifications to a contract or order.

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#### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Parts 212, 225, and 252

RIN 0750–AH43

#### Defense Federal Acquisition Regulation Supplement; Utilization of Domestic Photovoltaic Devices (DFARS Case 2011–D046)

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

**ACTION:** Final rule.

**SUMMARY:** DoD is adopting as final, with change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2011. The section provides that photovoltaic devices to be utilized in performance of any covered contract shall comply with the Buy American statute, subject to the exceptions provided in the Trade Agreements Act of 1979 or otherwise provided by law.

**DATES:** *Effective date:* May 22, 2012.

**FOR FURTHER INFORMATION CONTACT:** Amy G. Williams, telephone 571–372–6106.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published an interim rule in the **Federal Register** at 76 FR 78858 on December 20, 2011 and also issued technical amendments to the interim rule in the **Federal Register** at 77 FR 13013 on March 5, 2012. One respondent submitted a comment in response to the interim rule.

##### II. Discussion and analysis

Only one response was received. The respondent provided an editorial comment which has been incorporated in the final rule (see DFARS 225.7017–3(c)(1)).

There have also been some baseline changes since the publication of the interim rule.

##### 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 expects that this interim rule may 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.* Therefore, a final regulatory flexibility analysis has been prepared and is summarized as follows:

This final rule implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383) by providing regulatory coverage on utilization of domestic photovoltaic devices under certain covered contracts.

The objective of the rule is to promote utilization of domestic photovoltaic devices under energy savings contracts, utility service contracts, or private housing contracts awarded by DoD, if such contract does not include DoD purchase of photovoltaic devices as end products, but will nevertheless result in ownership of photovoltaic devices by DoD. According to the statute, DoD is deemed to own a photovoltaic device if the device is—

(1) Installed on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD for the full economic life of the device.

The legal basis for the rule is section 846 of the National Defense Authorization Act for Fiscal Year 2011.

No significant issues were raised by the public comments.

No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration.

This rule generally applies to other than small entities. When purchasing renewable power generated via on-site photovoltaic devices, DoD can either purchase the photovoltaic devices and thereby own, operate, and maintain the devices for their full economic life (already covered in DFARS part 225) or can do variations of the following: