

require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 211 and 252 as follows:

1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

#### PART 211—DESCRIBING AGENCY NEEDS

##### 211.274–5 [Redesignated as 211.274–6]

2. Redesignate section 211.274–5 as 211.274–6.

3. Add section 211.274–5 to read as follows:

##### 211.274–5 Policy for assignment of Government-assigned serial numbers.

It is DoD policy that contractors apply Government-assigned serial numbers, such as tail numbers/hull numbers and equipment registration numbers in human-readable format, on major end items when required by law, regulation, or military operational necessity. The latest version of MIL–STD–130, Marking of U.S. Military Property, shall be used for the marking of human-readable information.

4. In newly redesignated 211.274–6, add paragraph (c) to read as follows:

##### 211.274–6 Contract clauses.

\* \* \* \* \*

(c) Use the clause at 252.211–70XX, Use of Government-Assigned Serial Numbers, in solicitations and contracts that—

(1) Contain the clause at 252.211–7003, Item Identification and Valuation; and

(2) Require the contractor to mark major end items under the terms and conditions of the contract.

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

##### 252.211–7003 [Amended]

5. Amend section 252.211–7003 by removing “211.274–5” from the introductory text and adding in its place “211.274–6”.

##### 252.211–7007 [Amended]

5. Amend section 252.211–7007 by removing “211.274–5” from the

introductory text and adding in its place “211.274–6”.

6. Add section 252.211–70XX to read as follows:

##### 252.211–70XX Use of Government-Assigned Serial Numbers.

As prescribed in 211.274–6(c), use the following clause:

#### USE OF GOVERNMENT-ASSIGNED SERIAL NUMBERS (DATE)

(a) *Definitions.* As used in this clause—  
*Government-assigned serial number* means a combination of letters or numerals in a fixed human-readable information format (text) conveying information about a major end item, which is provided to a Contractor by the requiring activity with accompanying technical data instructions for marking the Government-assigned serial number on major end items to be delivered to the Government.

*Major end item* means a final combination of component parts and/or materials which is ready for its intended use and of such importance to operational readiness that review and control of inventory management functions (procurement, distribution, maintenance, disposal, and asset reporting) is required at all levels of life-cycle management. Major end items include aircraft; ships; boats; motorized wheeled, tracked, and towed vehicles for use on highway or rough terrain; weapon and missile end items; ammunition; and sets, assemblies, or end items having a major end item as a component.

*Unique item identifier (UII)* means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD-recognized unique identification equivalent.

(b) The Contractor shall mark the Government-assigned serial numbers on those major end items as specified by line item in the Schedule, in accordance with the technical instructions for the placement and method of application identified in the terms and conditions of the contract.

(c) The Contractor shall register the Government-assigned serial number along with the major end item's UII at the time of delivery in accordance with the provisions of the clause at DFARS 252.211–7003(d).

(d) The Contractor shall establish the UII for major end items for use throughout the life of the major end item. The Contractor may elect, but is not required, to use the Government-assigned serial number to construct the UII.

(End of Clause)

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 216 and 252

#### Defense Federal Acquisition Regulation Supplement Award-Fee Contracts (DFARS Case 2006–D021)

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address award-fee contracts, including eliminating the use of provisional award-fee payments.

**DATES:** Comments on the proposed rule should be submitted to the address shown below on or before June 29, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2006–D021, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2006–D021 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, 703–602–0302.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This DFARS case proposes to revise guidance for award-fee evaluations and payments and to eliminate the use of provisional award-fee payments. One new clause is provided as part of this rule to detail the use of award fees. In addition, this rule incorporates DoD policy guidance on the use of objective criteria.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD does not expect this 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.* because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis and do not utilize award-fee type incentives. Therefore, DoD has not performed an initial regulatory flexibility analysis. 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 2006–D021) in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 216 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 216 and 252 as follows:

1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

### PART 216—TYPES OF CONTRACTS

2. Add sections 216.401 and 216.401–70 to read as follows:

#### 216.401 General.

(e) Award-fee plans required in FAR 16.401(e) must be incorporated into all award-fee type contracts.

#### 216.401–70 Objective criteria.

(1) Contracting officers will use objective criteria to the maximum extent possible to measure contract performance. Objective criteria are associated with cost-plus-incentive-fee and fixed-price incentive contracts.

(2) When objective criteria exist but the contracting officer determines that it is in the best interest of the Government also to incentivize subjective elements of performance, the most appropriate contract type is a multiple-incentive contract containing both objective

incentives and subjective award-fee criteria (*i.e.*, cost-plus-incentive-fee/award-fee or fixed-price-incentive/award-fee).

(3) See PGI 216.401–70 for guidance on the use of award-fee contracts.

3. Revise section 216.405–2 to read as follows:

#### 216.405–2 Cost-plus-award-fee contracts.

(1) *Award-fee pool.* The award-fee pool is the total available award fee for each evaluation period for the life of the contract. The contracting officer must perform an analysis of appropriate fee distribution to ensure at least 40% of the award fee is held for the final evaluation so that the award fee is appropriately distributed over all evaluation periods to incentivize the contractor throughout performance of the contract.

(2) *Award-fee evaluation and payments.* Award-fee payments other than payments resulting from the evaluation at the end of an award-fee period are prohibited. (This prohibition does not apply to base-fee payments.) The fee-determining official's rating for award-fee evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. The final award-fee payment will be consistent with the contracting officer's final evaluation of the contractor's overall performance against the cost, schedule, and performance outcomes specified in the award-fee plan.

(3) *Limitations.*

(i) The CPAF contract shall not be used—

(A) To avoid—

(1) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(2) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(1) It is more advantageous; and

(2) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(iii) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

(4) See PGI 216.405–2 for guidance on the use of cost-plus-award-fee contracts.

4. Add section 216.406 to read as follows:

#### 216.406 Contract clauses.

(e) Use the clause at 252.216–70XX, Award Fee, in solicitations and contracts when an award-fee contract is contemplated.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 252.216–70XX to read as follows:

#### 252.216–70XX Award fee.

As prescribed in 216.406(e), insert the following clause:

#### AWARD FEE (DATE)

The Contractor may earn award fee from a minimum of zero dollars to the maximum amount stated in the award-fee plan in this contract. In no event will award fee be paid to the Contractor for any evaluation period in which the Government rates the Contractor's overall cost, schedule, and technical performance below satisfactory. The Government may unilaterally revise the award-fee plan prior to the beginning of any rating period in order to redirect Contractor emphasis.

(End of clause)

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### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Parts 245 and 252

RIN 0750–AG64

#### Defense Federal Acquisition Regulation Supplement; Reporting of Government Property Lost, Stolen, Damaged, or Destroyed (DFARS Case 2008–D049)

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractors to report loss, theft, damage, and destruction (LTDD) of Government property to the DCMA “eTools” application.