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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217, 234, 237, and 252

RIN 0750-AI27

Defense Federal Acquisition Regulation Supplement: Clauses with Alternates—Special Contracting Methods, Major System Acquisition, and Service Contracting (DFARS Case 2014-D004)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise and update clauses and their prescriptions for special contracting methods, major system acquisition, and service contracting to create basic and alternate clauses structured in a manner to facilitate use of automated contract writing systems. The rule also includes the full text of each alternate, rather than only showing the paragraphs that differ from the basic clause.

DATES: Comment Date: Comments on the proposed rule should be submitted in writing to the address shown below 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 identified by DFARS Case 2014-D004,

using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2014-D004" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2014-D004." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2014-D004" on your attached document.

- o E-mail: osd.dfars@mail.mil. Include DFARS Case 2014-D004 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Janetta Brewer, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <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. Janetta Brewer, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855,

3060 Defense Pentagon, Washington, DC 20301-3060. Telephone
571-372-6104.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is undertaking a revision of provisions and clauses with alternates and the associated prescriptions, in order to clarify usage and facilitate the use of automated contract writing systems. These proposed changes do not affect the meaning or applicability of the provisions or clauses.

II. Discussion

This proposed rule addresses DFARS parts 217, 234, and 237 clauses that have alternates. The affected clauses are—

- 252.217-7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, with one alternate;
- 252.234-7003 Notice of Cost and Software Data Reporting System, with one alternate;
- 252.234-7004 Cost and Software Data Reporting System, with one alternate;
- 252.237-7002 Award to Single Offeror, with one alternate; and
- 252.237-7016 Delivery Tickets, with two alternates.

The naming convention results in proposed new clause titles, e.g., Exercise of Option to Fulfill Foreign Military Sales

Commitments—Basic, and Exercise of Option to Fulfill Foreign Military Sales Commitments—Alternate I.

An umbrella prescription is proposed to be added for the elements common to the basic clause and alternate. The specific prescription for the basic clause and alternate would then address only the requirements for their use that enable the selection of the basic or the alternate. The planned changes will increase the clarity and ease of use but will not revise the applicability of the clause or provision in any way. The presentation of the text of alternates would no longer consist solely of paragraphs that are different from the basic clause, but would instead include the entire full text of the alternate clause. Further, this proposed rule would also revise the applicable clause preface, i.e., the language in part 252 that precedes a provision, clause, or alternate. The clause preface language is being tailored to identify the specific clause prescription reference for each basic and alternate clause and to delineate how the basic and alternate clauses differ.

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 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.*, because it merely revises the prescriptions for solicitation provisions and clauses with alternates, and includes the full text of each provision or clause for each alternate. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of this case is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create unique prescriptions for the basic version and each alternate of DFARS parts 217, 234, and 237 solicitations provisions and clauses, and to include the full text of each clause alternate.

The use of automated contract writing systems will be facilitated by having unique prescriptions for the basic version

and each alternate of DFARS solicitations provisions and clauses. The current convention requires the prescription for the basic provision or clause to address all the possibilities covered by the alternates, and then the prescription for each alternate addresses only what is different for the use of that particular alternate. This rule will revise the prescriptions so that the basic solicitation provision or clause and each alternate is unique and stands on its own. The prescriptions will not be revised in any way to change when they are applicable to offerors, contractors, or subcontractors.

Additionally, the inclusion of the full text of each provision or clause alternate aims to make the terms of a provision or clause alternate clearer to offerors, as well as to DoD contracting officers. Instead of the current convention for alternates to show only paragraphs changed from the basic version of the provision or clause, this rule proposes to include the full text of each version of the clause. This will assist in making the terms of the clause clearer, because all paragraph substitutions will have already been made.

Inapplicable paragraphs from the basic version of the clause that are superseded by the alternate are not included in the solicitation or contract to prevent confusion.

Potential offerors, including small businesses, may be affected by this rule by seeing an unfamiliar format for clause

alternates in solicitations and contracts issued by DoD contracting activities. According to the Federal Procurement Data System, in fiscal year 2012, DoD made approximately 270,000 contract awards (not including modification and orders) that exceeded the micro-purchase threshold, of which approximately 180,000 (67%) were awarded to small businesses. It is unknown how many of these contracts were awarded that included an alternate to a DFARS provision or clause. Nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how clause alternates are presented in the solicitations and contracts will be changed. This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new format of the clause alternates in full text contained in contracts issued by any DoD contracting activity. The rule also anticipates saving contractors time by making all paragraph substitutions from the basic version of the clause, and not requiring the contractors to read inapplicable paragraphs contained in the basic version of the clause where alternates are also included in the solicitations and contracts. The overall burden caused by this rule is expected to be negligible and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that will accomplish the objectives of the 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 2014-D004), in correspondence.

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 217, 234, 237, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 217, 234, 237, and 252 are proposed to be amended as follows:

1. The authority citation for parts 217, 234, 237, and 252 continues to read as follows:

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

PART 217—SPECIAL CONTRACTING METHODS

2. In section 217.208-70, revise paragraph (a) to read as follows:

217.208-70 Additional clauses.

(a) Use the basic or the alternate of the clause at 252.217-7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, in solicitations and contracts when an option may be used for Foreign Military Sales requirements. Do not use the basic or the alternate of this clause in contracts for establishment or replenishment of DoD inventories or stocks, or acquisitions made under DoD cooperative logistics support arrangements.

(1) Use the basic clause when the Foreign Military Sales country is known at the time of solicitation or award.

(2) Use the alternate I clause when the foreign military sale country is not known at the time of solicitation or award.

* * * * *

PART 234—MAJOR SYSTEM ACQUISITION

3. Revise section 234.7101 to read as follows:

234.7101 Solicitation provision and contract clause.

(a) Use the basic or the alternate of the provision at 252.234-7003, Notice of Cost and Software Data Reporting System, in any

solicitation that includes the basic or the alternate of the clause at 252.234-7004, Cost and Software Data Reporting.

(1) Use the basic provision when the solicitation includes the clause at 252.234-7004, Cost and Software Data Reporting-Basic.

(2) Use the alternate I provision when the solicitation includes the clause at 252.234-7004, Cost and Software Data Reporting-Alternate I.

(b) Use the basic or the alternate of the clause at 252.234-7004, Cost and Software Data Reporting System, in solicitations that include major defense acquisition programs or major automated information system programs as follows:

(1) Use the basic clause in solicitations and contracts for major defense acquisition programs or major automated information system programs that exceed \$50 million.

(2) Use the alternate I clause in solicitations and contracts for major defense acquisition programs or major automated information system programs with a value equal to or greater than \$20 million but less than or equal to \$50 million, when so directed by the program manager with the approval of the OSD Deputy Director, Cost Assessment.

PART 237—SERVICE CONTRACTING

4. In section 237.7003, revise paragraph (a) to read as follows:

237.7003 Solicitation provisions and contract clauses.

(a) Use the basic or the alternate of the provision at 252.237-7002, Award to Single Offeror, in solicitations and contracts for mortuary services.

(1) Use the basic provision in all sealed bid solicitations for mortuary services.

(2) Use the alternate I provision in all negotiated solicitations for mortuary services.

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5. In section 237.7101, revise paragraph (e) to read as follows:

237.7101 Solicitation provisions and contract clauses.

* * * * *

(e) Use the basic or an alternate of the clause at 252.237-7016, Delivery Tickets, in all solicitations and contracts for laundry and dry cleaning services.

(1) Use the basic clause when services are not to be provided on a bulk weight basis.

(2) Use the alternate I clause when services are for bag type laundry to be provided on a bulk weight basis.

(3) Use the alternate II clause when services are unsorted laundry to be provided on a bulk weight basis.

* * * * *

PART 252--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 252.217-7000 by--

- a. Revising the introductory text, clause title and date; and
- b. Revising Alternate I.

The revisions read as follows:

252.217-7000 Exercise of Option to Fulfill Foreign Military Sales Commitments.

As prescribed in 217.208-70(a), use one of the following clauses:

Basic. As prescribed in 217.208-70(a)(1), use the following clause.

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS—

BASIC (DATE)

* * * *

Alternate I. As prescribed in 217.208-70(a)(2), use the following clause, which uses a different paragraph (b) than paragraph (b) of the basic clause.

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS—

ALTERNATE I (DATE)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) On the date the option is exercised, the Government shall identify the foreign country for the purpose of negotiating any equitable adjustment attributable to foreign military sales.

Failure to agree on an equitable adjustment shall be treated as a dispute under the Disputes clause of this contract.

(End of clause)

7. Amend section 252.234-7003 by-

- a. Revising the introductory text, clause title and date; and
- b. Revising Alternate I.

The revisions read as follows:

252.234-7003 Notice of Cost and Software Data Reporting System

As prescribed in 234.7101(a) use one of the following provisions:

Basic. As prescribed in 234.7101(a) (1), use the following provision.

NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM-BASIC (DATE)

* * * * *

Alternate I. As prescribed in 234.7101(a) (2), use the following provision, which uses a different paragraph (c) than the basic provision.

NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM-ALTERNATE I (DATE)

(a) This solicitation includes-

- (1) The Government-approved cost and software data reporting (CSDR) plan for the contract, DD Form 2794; and
- (2) The related Resource Distribution Table.

(b) As part of its proposal, the offeror shall-

- (1) Describe the process to be used to satisfy the requirements of the DoD 5000.04-M-1, CSDR Manual, and the

Government-approved CSDR plan for the proposed contract;

(2) Demonstrate how contractor cost and data reporting (CCDR) will be based, to the maximum extent possible, upon actual cost transactions and not cost allocations;

(3) Demonstrate how the data from its accounting system will be mapped into the standard reporting categories required in the CCDR data item descriptions;

(4) Describe how recurring and nonrecurring costs will be segregated;

(5) Provide comments on the adequacy of the CSDR contract plan and related Resource Distribution Table; and

(6) Submit the DD Form 1921, Cost Data Summary Report, and DD Form 1921-1, Functional Cost-Hour Report, with its pricing proposal.

(c) CSDR reporting will be required for subcontractors for selected subcontracts identified in the CSDR contract plan as requiring such reporting. The offeror shall identify, by providing comments on the Resource Distribution Table, the subcontractors, or, if the subcontractors have not been selected, the subcontracted effort.

(End of provision)

8. Amend section 252.234-7004 by—

- a. Revising the introductory text, clause title and date; and
- b. Revising Alternate I.

The revisions read as follows:

252.234-7004 Cost and Software Data Reporting System

As prescribed in 234.7101(b), use one of the following clauses:

Basic. As prescribed at 234.7101(b)(1), use the following clause.

COST AND SOFTWARE DATA REPORTING SYSTEM—BASIC (DATE)

* * * * *

Alternate I. As prescribed in 234.7101(b)(2), use the following clause, which uses a different paragraph (b) than the basic clause.

COST AND SOFTWARE DATA REPORTING SYSTEM—ALTERNATE I (DATE)

(a) In the performance of this contract, the Contractor shall use—

(1) A documented standard cost and software data reporting (CSDR) process that satisfies the guidelines contained in the DoD 5000.04-M-1, CSDR Manual;

(2) Management procedures that provide for generation of timely and reliable information for the contractor cost data reports (CCDRs) and software resources data reports (SRDRs) required by the CCDR and SRDR data items of this contract; and

(3) The Government-approved CSDR plan for this contract, DD Form 2794, and the related Resource Distribution Table as the basis for reporting in accordance with the required CSDR data item descriptions (DIDs).

(b) The Contractor shall require CSDR reporting from selected

subcontractors identified in the CSDR contract plan as requiring such reporting. If the Contractor changes subcontractors or makes new awards for selected subcontract effort, the Contractor shall notify the Government.

(End of clause)

9. Amend section 252.237-7002 by—

- a. Revising the introductory text, provision title and date; and
- b. Revising Alternate I.

The revisions read as follows:

252.237-7002 Award to Single Offeror.

As prescribed in 237.7003(a), use one of the following provisions:

Basic. As prescribed in 237.7003(a)(1), use the following provision.

AWARD TO SINGLE OFFEROR—BASIC (DATE)

* * * * *

Alternate I. As prescribed in 237.7003(a)(2), use the following provision, which uses a different paragraph (d) than the basic provision.

AWARD TO SINGLE OFFEROR—ALTERNATE I (DATE)

- (a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

(End of provision)

10. Amend section 252.237-7016 by—

- a. Revising the introductory text, provision title and date; and
- b. Revising Alternate I and Alternate II.

The revisions read as follows:

252.237-7016 Delivery Tickets.

As prescribed in 237.7101(e), use one of the following clauses:

Basic. As prescribed in 237.7101(e)(1), use the following clause.

DELIVERY TICKETS—BASIC (DATE)

* * * * *

Alternate I. As prescribed in 237.7101(e)(2), use the following clause, which includes paragraphs (c), (d), and (e) not included in the basic clause.

DELIVERY TICKETS—ALTERNATE I (DATE)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that—

(1) Each bag contains only articles within a single bag type as specified in the schedule; and

(2) Each bag is weighed and the weight and bag type are identified on the bag.

(d) The Contractor shall, at time of pickup—

(1) Verify the weight and bag type and record them on the delivery ticket; and

(2) Provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

(End of clause)

Alternate II. As prescribed in 237.7101(e)(3), use the following clause, which includes paragraphs (c), (d), and (e) not included in the basic clause.

DELIVERY TICKETS—ALTERNATE II (DATE)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that each bag is weighed and that the weight is identified on the bag.

(d) The Contractor, at time of pickup, shall verify and record the weight on the delivery ticket and shall provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight is verified at time of delivery.

(End of clause)