



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket DARS-2023-0037]

RIN 0750-AL84

Defense Federal Acquisition Regulation Supplement: DoD Mentor-Protégé Program (DFARS Case 2023-D011)

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 implement a section of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 that permanently authorizes and modifies the DoD Mentor-Protégé Program.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, 703-508-7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 88 FR 73306 on October 25, 2023, to implement section 856 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117-263). Section 856 transferred

section 831 of the NDAA for FY 1991 (Pub. L. 101-510) to 10 U.S.C. 4902 and authorized the DoD Mentor-Protégé Program on a permanent basis. Section 856 also extends the term for program participation and removes the term limitation for mentors to incur costs under mentor-protégé agreements entered into after December 23, 2022. Section 856 does not apply to mentor-protégé agreements entered into prior to December 23, 2022. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no significant changes from the proposed rule.

B. Analysis of Public Comment

Comment: One respondent recommended the rule be amended to allow a protégé to have more than one mentor at a time, as long as the mentors are not competitors and do not have any conflicts of interest. The respondent indicated that this would align with the Small Business Administration (SBA) Mentor-Protégé Program (MPP), which allows a protégé to have two mentors at the same time.

Response: This rule implements section 856 of the NDAA for FY 2023, which is codified at 10 U.S.C. 4902. Paragraph (c)(2) of 10 U.S.C. 4902 indicates that a protégé firm may not be party to

more than one mentor-protégé agreement concurrently. This means that a protégé may have only one mentor during the term of an agreement. Therefore, the proposed change is inconsistent with the statute. However, because the statute allows a protégé firm to participate in the DoD MPP for a 5-year period beginning on the date the protégé firm enters into its first mentor-protégé agreement, a protégé may have more than one mentor during the 5-year period as long as the protégé is not a party to more than one mentor-protégé agreement at a time. For example, if a protégé firm enters into a 2-year mentor-protégé agreement with a mentor, then the protégé firm could enter into another mentor-protégé agreement with a different mentor after the conclusion of the first agreement, as long as it did so within the 5-year period and the second agreement does not extend beyond the 5-year period from date the protégé firm entered into its first mentor-protégé agreement. As such, a protégé firm under the DoD MPP may still benefit from having more than one mentor during its participation in the program.

C. Other Changes

Minor editorial changes are made in appendix I, section I-106.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule amends the clause at DFARS 252.232-7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot

Mentor-Protégé Program, to remove the word "Pilot" from the clause title. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to not apply to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This final rule implements the permanent authorization of and statutory amendments to the DoD Mentor-Protégé Program. The purpose of the program is to provide incentives to DoD contractors to furnish eligible small business concerns with assistance designed to—

(1) Enhance the capabilities of small business concerns to perform as subcontractors and suppliers under DoD contracts and other Federal Government contracts and subcontracts; and

(2) Increase the participation of small business concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and contracts with commercial entities.

Therefore, this final rule will benefit small business concerns that participate in the program by extending the opportunity to enter into DoD Mentor-Protégé agreements and extending the term of the agreements. This final rule is also expected to benefit large entities and DoD by expanding the defense industrial base.

V. 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, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. 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:

This final rule is necessary to implement section 856 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117-263). Section 856 transferred section 831 of the NDAA for FY 1991 (Pub. L. 101-510) to 10 U.S.C. 4902 and authorized the DoD Mentor-Protégé Program on a permanent basis. Section 856 also extends the term for program participation and removes the term limitation for mentors to incur costs under agreements entered into after December 23, 2022. The objective of this rule is to implement the permanent authorization of the DoD Mentor-Protégé Program and to make other Program changes.

No significant issues were raised by the public comment in response to the initial regulatory flexibility analysis.

The number of new DoD Mentor-Protégé agreements entered into in FY 2021 was 50, with a total of 104 active agreements; in FY 2022, 29 new agreements were entered into, with a total of 62 active agreements; and in FY 2023, 19 new agreements were entered into, with a total of 69 active agreements. The average number of new agreements entered into during the last three fiscal years was approximately 33, with an average of 78 total active agreements per fiscal year. DoD estimates 44 new agreements will be entered into in FY 2024, with a total of 76 active agreements in place. As of January 5, 2024, there are 62

unique small entities with active agreements. Since the number of small entities that will enter into new agreements is unknown, DoD cannot provide a more precise estimate of the number of small entities to which this rule will apply.

This final rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

DoD did not identify any significant alternatives to the rule that would accomplish the stated objectives of the statute and that would minimize the significant economic impact of the rule on small entities. DoD does not expect this rule to have a significant economic impact on small entities. Any impact is expected to be beneficial.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this final rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704-0332, DoD Pilot Mentor-Protégé Program.

List of Subjects in 48 CFR Parts 219, 232, and 252 and Appendix I to Chapter 2

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219, 232, and 252 and appendix I to chapter 2 are amended as follows:

1. The authority citation for 48 CFR parts 219, 232, and 252 and appendix I to chapter 2 continues to read as follows:

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

PART 219—SMALL BUSINESS PROGRAMS

2. Revise the heading for subpart 219.71 to read as follows:

Subpart 219.71—DoD Mentor Protégé Program

3. Revise and republish section 219.7100 to read as follows:

219.7100 Scope.

This subpart implements the DoD Mentor-Protégé Program (referred to as the Program) authorized under 10 U.S.C. 4902. The purpose of the Program is to provide incentives for DoD contractors to assist protégé firms in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

219.7101 [Amended]

4. Amend section 219.7101 by removing "Pilot".

219.7103-1 [Amended]

5. Amend section 219.7103-1 by removing "Pilot".

219.7103-2 [Amended]

6. Amend 219.7103-2 in paragraph (b) by removing "Pilot".

7. Amend section 219.7104 by revising paragraphs (b) and (d)

to read as follows:

219.7104 Developmental assistance costs eligible for reimbursement or credit.

* * * * *

(b) Before incurring any costs under the Program, mentor firms must establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. For mentor-protégé agreements entered into prior to December 23, 2022, to be eligible for reimbursement under the Program, the mentor firm must incur the costs not later than September 30, 2026.

* * * * *

(d) For mentor-protégé agreements entered into prior to December 23, 2022, developmental assistance costs incurred by a mentor firm not later than September 30, 2026, that are eligible for crediting under the Program, may be credited toward subcontracting plan goals as set forth in appendix I. For mentor-protégé agreements entered into on or after December 23, 2022, developmental assistance costs that are eligible for crediting under the Program may be credited toward subcontracting plan goals as set forth in appendix I.

PART 232—CONTRACT FINANCING

232.412-70 [Amended]

8. Amend section 232.412-70 by removing "Pilot".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Amend section 252.232-7005 by revising the section heading and clause heading and date to read as follows:

252.232-7005 Reimbursement of Subcontractor Advance Payments—DoD Mentor-Protégé Program.

* * * * *

REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS—DOD MENTOR—PROTÉGÉ

PROGRAM (MAR 2024)

* * * * *

10. Amend appendix I to chapter 2 by—

a. Revising the appendix heading.

b. In section I-100, revising paragraph (a) introductory text.

c. In section I-102—

i. In paragraph (a) (3) (i), removing "\$100 million" and adding "\$25 million" in its place;

ii. In paragraph (a) (3) (ii), removing "or";

iii. In paragraph (a) (3) (iii), removing the period and adding "; or" in its place; and

iv. Adding paragraph (a) (3) (iv).

d. Revising and republishing section I-103.

e. In section I-106—

i. Revising paragraph (d) (1) (ii); and

ii. Adding paragraph (d) (6) (vi).

f. In section I-107, revising paragraph (k).

g. In section I-108, in paragraph (a) (5), removing "2 years" and adding "3 years" in its place.

h. In section I-109, in paragraph (b), removing "Pilot".

i. In section I-111, in paragraph (a), removing "Director, OSBP" and adding "Director, OSBP, OUSD(A&S) or the Director, OSBP" in its place.

j. In section I-112.2—

- i. Revising the section heading;
- ii. Removing paragraph (a) (3); and
- iii. Redesignating paragraph (a) (4) as paragraph (a) (3).

The revisions and additions read as follows:

**Appendix I to Chapter 2—Policy and Procedures for the DoD
Mentor-Protégé Program**

I-100 Purpose.

(a) This appendix implements the DoD Mentor-Protégé Program (referred to as the Program) authorized under 10 U.S.C. 4902. The purpose of the Program is to provide incentives to DoD contractors to furnish eligible small business concerns with assistance designed to—

* * * * *

I-102 Participant eligibility.

(a) * * *

(3) * * *

(iv) Is otherwise capable to assist in the development of protégé firms and is approved by the Director OSBP, OUSD(A&S).

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I-103 Incentives for mentors.

Mentors incurring costs through September 30, 2026, pursuant to a mentor-protégé agreement approved prior to December 23, 2022, and mentors incurring costs pursuant to a mentor-protégé agreement approved on or after December 23, 2023, may be eligible for—

(a) Credit toward the attainment of its applicable subcontracting goals for unreimbursed costs incurred in providing developmental assistance to its protégé firm(s);

(b) Reimbursement pursuant to the execution of a separately priced contract line item added to a DoD contract; or

(c) Reimbursement pursuant to entering into a separate DoD contract upon determination by the Director, OSBP, of the cognizant military department or defense agency that unusual circumstances justify using a separate contract.

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I-106 Development of mentor-protégé agreements.

* * * * *

(d) * * *

(1) * * *

(ii) Engineering and technical matters such as production, inventory control, manufacturing, test and evaluation, quality assurance; acquisition or transfer of hardware, tooling, or software; and technology transfer and transition; and

* * * * *

(6) * * *

(vi) Manufacturing innovation institutes.

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I-107 Elements of a mentor-protégé agreement.

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(k) A program participation term for the agreement that does not exceed 3 years. The agreement may be extended for a period not to exceed 2 years if approved by the Director, OSBP, OUSD(A&S). The Director, OSBP, of the cognizant military department or defense agency will submit requests for an extension of the agreement to the Director, OSBP, OUSD(A&S) for approval. The request will include a justification describing the unusual circumstances that warrant a term in excess of 3 years;

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I-112.2 Program specific reporting requirements.

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