

acquisition. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). The proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 24, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005–D012, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: dfars@osd.mil. Include DFARS Case 2005–D012 in the subject line of the message.

- Fax: (703) 602–0350.

- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed rule deletes DFARS text addressing internal DoD procedures in the following areas:

DFARS 225.670–4—Processing of requests for waiver of foreign source restrictions.

DFARS 225.871–4—Processing of requests for waiver under North Atlantic Treaty Organization cooperative projects.

DFARS 225.7017–3—Preparation of determinations regarding award of a contract for ballistic missile defense research, development, test, and evaluation to a foreign source.

DFARS 225.7502—Application of the Balance of Payments Program to an acquisition.

This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

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 the proposed rule addresses internal DoD procedural matters and makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005–D012.

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 Part 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 225 as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

2. Section 225.670–4 is revised to read as follows:

225.670–4 Waivers.

The Secretary of Defense may waive this restriction on the basis of national security interests. To request a waiver, follow the procedures at PGI 225.670–4.

3. Section 225.871–4 is amended by revising paragraph (c) to read as follows:

225.871–4 Statutory waivers.

* * * * *

(c) To request a waiver under a cooperative project, follow the procedures at PGI 225.871–4.

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4. Section 225.7017–3 is amended by revising paragraph (b) to read as follows:

225.7017–3 Exceptions.

* * * * *

(b) If the head of the contracting activity certifies in writing, before contract award, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority, as applicable, shall make a determination, in accordance with PGI 225.7017–3(b), that will be the basis for the certification.

5. Section 225.7502 is revised to read as follows:

225.7502 Procedures.

If the Balance of Payments Program applies to the acquisition, follow the procedures at PGI 225.7502.

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DEPARTMENT OF DEFENSE

48 CFR Parts 242 and 252

[DFARS Case 2005–D006]

RIN 0750–AF19

Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Earned Value Management Systems

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 update requirements for DoD contractors to establish and maintain earned value management systems (EVMS). The rule revises the dollar thresholds at which EVMS requirements are applied and eliminates requirements

for contractors to submit cost/schedule status reports under DoD contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 24, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005–D006, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: dfars@osd.mil. Include DFARS Case 2005–D006 in the subject line of the message.

- Fax: (703) 602–0350.

- Mail: Defense Acquisition Regulations System, Attn: Ms. Deborah Tronic, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

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

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revises DFARS Subpart 242.11 and the corresponding clauses in DFARS Part 252 to reflect changes in DoD policy on the application of EVMS compliance requirements. The proposed changes—

- Require compliance with American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems, for cost or incentive contracts and subcontracts valued at \$20,000,000 or more;

- Require a formally validated and accepted EVMS for cost or incentive contracts and subcontracts valued at \$50,000,000 or more;

- Discourage the application of earned value management to fixed-price contracts and subcontracts; and

- Eliminate requirements for contractors to submit cost/schedule status reports.

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 has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The analysis is summarized as follows:

This proposed rule amends the DFARS to update requirements for DoD contractors to establish and maintain earned value management systems (EVMS). The rule revises the dollar thresholds at which EVMS requirements are applied and eliminates requirements for contractors to submit cost/schedule status reports under DoD contracts. The objective of the proposed rule is to streamline, improve, and increase consistency in earned value management implementation and application.

The threshold at which a DoD contractor previously was required to have an EVMS that complied with American National Standards Institute/Electronic Industries Alliance Standard 748 (ANSI/EIA–748) was \$73 million for contracts and subcontracts funded with research, development, test and evaluation funding; and \$315 million for contracts and subcontracts funded with operation and maintenance or procurement funding. This proposed rule would lower those thresholds to a single \$20 million threshold for all cost or incentive contracts and subcontracts, regardless of funding type, and would establish a new threshold of \$50 million for an EVMS that has been formally validated and accepted as complying with the standard.

According to the Defense Contract Action Data System, in Fiscal Year 2004, 7 small businesses received a cost or incentive type award obligating funds in excess of \$20 million, and 46 small businesses received a fixed-price type award obligating funds in excess of \$20 million. EVMS compliance requirements would only be used in fixed-price contracts in extremely rare instances. The Dynamic Small Business Search database hosted on the Central Contractor Registration Web site indicates there are 304,961 small businesses registered in that database.

The proposed rule is consistent with the proposed changes to the Federal Acquisition Regulation (FAR) published in the **Federal Register** on April 8, 2005 (70 FR 17945), that would extend Governmentwide the requirement for a contractor to have an EVMS that complies with ANSI/EIA–748. The initial regulatory flexibility analysis for the proposed FAR rule anticipated that agencies would establish a threshold of \$20 million for EVMS compliance.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such

comments should be submitted separately and should cite DFARS Case 2005–D006.

C. Paperwork Reduction Act

The proposed rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The contract performance reports required by the rule are approved under Office of Management and Budget Clearance Number 0704–0188, Acquisition Management Systems and Data Requirements Control List, for use through May 31, 2006.

List of Subjects in 48 CFR Parts 242 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 242 and 252 as follows:

1. The authority citation for 48 CFR parts 242 and 252 continues to read as follows:

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

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Section 242.1106 is revised to read as follows:

242.1106 Reporting requirements.

(a)(i) See DoDI 5000.2, Operation of the Defense Acquisition System, for reporting requirements for defense technology projects and acquisition programs. The earned value management system requirement is applied as follows:

(A) For cost or incentive contracts and subcontracts valued at \$20,000,000 or more, the earned value management system shall comply with American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems.

(B) For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, the contractor shall have an earned value management system that has been formally validated and accepted by the contracting officer.

(C) For cost or incentive contracts and subcontracts valued at less than \$20,000,000, earned value management application is optional and is a risk-based decision that is at the discretion of the program manager. See PGI 242.1106(a)(i)(C) for information on conducting a cost-benefit analysis.

(D) For firm-fixed-price contracts and subcontracts of any dollar value, the application of earned value management is discouraged. See PGI

242.1106(a)(i)(D) for information on obtaining a waiver before applying earned value management to a firm-fixed-price contract or subcontract.

(ii) When an offeror proposes a plan for compliance with earned value management system guidelines, follow the review procedures at PGI 242.1106(a)(ii).

(iii) The Defense Contract Management Agency is the DoD executive agency for earned value management system compliance reviews.

(iv) Additional guidance on earned value management can be found in the Defense Acquisition Guidebook at <http://akss.dau.mil/dag> and the DoD Earned Value Management Implementation Guide at http://guidebook.dcma.mil/79/guidebook_process.htm.

3. Section 242.1107-70 is revised to read as follows:

242.1107-70 Solicitation provisions and contract clauses.

(a) For cost or incentive contracts valued at \$50,000,000 or more—

(1) Use the provision at 252.242-7001, Notice of Earned Value Management System—Validation Requirement, in the solicitations; and

(2) Use the clause at 252.242-7002, Earned Value Management System—Validation Requirement, in the solicitation and contract.

(b) For cost or incentive contracts valued at \$20,000,000 or more but less than \$50,000,000—

(1) Use the provision at 252.242-7005, Notice of Earned Value Management System—Compliance Requirement, in the solicitation; and

(2) Use the clause at 252.242-7006, Earned Value Management System—Compliance Requirement, in the solicitation and contract.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 252.242-7001 and 252.242-7002 are revised to read as follows:

252.242-7001 Notice of Earned Value Management System—Validation Requirement.

As prescribed in 242.1107-70(a)(1), use the following provision:
NOTICE OF EARNED VALUE MANAGEMENT SYSTEM—VALIDATION REQUIREMENT (XXX 2006)

(a) The offeror shall provide documentation that its proposed earned value management system (EVMS) complies with the EVMS guidelines in American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748), or that the proposed EVMS has been validated and accepted by the Department of Defense.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit its comprehensive plan for compliance with the EVMS guidelines to the Government for approval.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the EVMS guidelines as applied to subcontractors;

(v) Provide documentation describing the process, results, and any Government participation in any third-party or self-evaluation of the system's compliance with EVMS guidelines; and

(vi) Include a schedule that provides a timetable of events leading up to Government validation and acceptance of the Contractor's EVMS. This schedule should include a progress assistance visit no later than 30 days after contract award, and a compliance review as soon as practicable. The Department of Defense Earned Value Management Implementation Guide outlines the requirements for conducting a progress assistance visit and compliance review.

(2) The Government will review the offeror's EVMS plan before contract award.

(c) Offerors shall identify the subcontractors, or subcontracted effort if subcontractors have not been selected, to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or subcontracted effort selected.

(1) For proposed subcontracts with an estimated dollar value of \$50,000,000 or more, the offeror shall be responsible for ensuring that the selected subcontractors comply with the requirements of the Earned Value Management System—Validation Requirement clause of the contract.

(2) For proposed subcontracts with an estimated dollar value of \$20,000,000 or more but less than \$50,000,000, the

offeror shall be responsible for ensuring that the selected subcontractors comply with ANSI/EIA-748. The terms for compliance with ANSI/EIA-748 may be subject to negotiation between the offeror and the subcontractor. The conduct of integrated baseline reviews also may be subject to negotiation between the offeror and the subcontractor.

(d) The offeror shall incorporate its compliance evaluation factors for subcontractors into the plan required by paragraph (b) of this provision. (End of provision)

252.242-7002 Earned Value Management System—Validation Requirement.

As prescribed in 242.1107-70(a)(2), use the following clause:

EARNED VALUE MANAGEMENT SYSTEM—VALIDATION REQUIREMENT (XXX 2006)

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

(1) An earned value management system (EVMS) that has been accepted by the Administrative Contracting Officer (ACO) as complying with the EVMS guidelines in American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748); and

(2) Management procedures that provide for generation of timely and reliable information for the contract performance report (CPR) required by the CPR data item of this contract.

(b) If, at the time of award, the Contractor's EVMS has not been accepted by the ACO as complying with the EVMS guidelines, the Contractor shall apply the system to the contract and shall take timely action to implement its plan to obtain compliance. If the Contractor does not follow the implementation schedule in the compliance plan or, within a reasonable time, correct all system deficiencies identified during the compliance review specified in that plan, the Contracting Officer may take remedial action.

(c) The Government will require integrated baseline reviews. Such reviews shall be scheduled as early as practicable, and the review process should be initiated no later than 180 calendar days after (1) contract award, (2) the exercise of significant contract options, and (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess the Contractor's baseline to be used for performance measurement, to ensure complete coverage of the statement of work,

logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor-proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or the ACO's authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the EVMS guidelines referenced in paragraph (a) of this clause and to demonstrate—

(1) Proper implementation of the procedures generating the cost and schedule information being used to satisfy the contract data requirements;

(2) Continuing application of the accepted company procedures in satisfying the CPR data item through recurring program/project and contract surveillance; and

(3) Implementation of any corrective actions identified during the surveillance process.

(f) The Contractor shall require its subcontractors to comply with EVMS requirements as follows:

(1) For subcontracts with an estimated dollar value of \$50,000,000 or more, the following subcontractors shall comply with the requirement of this clause.

(Contracting Officer to insert names of subcontractors selected for compliance with the EVMS validation requirement in accordance with 252.242-7001(c)(1).)

(2) For subcontracts with an estimated dollar value of \$20,000,000 or more but less than \$50,000,000, the following subcontractors shall comply with ANSI/EIA-748.

(Contracting Officer to insert names of subcontractors selected for compliance with ANSI/EIA-748 in accordance with 252.242-7001(c)(2).)

(g) If indicated by the CPR, the Contractor shall submit a request for approval to begin implementation of an over-target baseline or over-target schedule to the Contracting Officer. This request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will have 30 calendar days to respond after receipt of the request. Failure of the Government to respond within the 30-day period will constitute automatic approval. For cost-reimbursement contracts, the contract budget base should include authorized changes to the contract scope but should exclude changes for cost growth. (End of clause)

5. Sections 252.242-7005 and 252.242-7006 are revised to read as follows:

252.242-7005 Notice of Earned Value Management System—Compliance Requirement.

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM—COMPLIANCE REQUIREMENT (XXX 2006)

As prescribed in 242.1107-70(b)(1), use the following provision:

(a) The offeror shall submit a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the Earned Value Management System—Compliance Requirement clause of this contract. This description shall include a matrix that correlates each guideline in American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748), to the corresponding process in the Contractor's written summary.

(b) If the offeror proposes to use an earned value management system (EVMS) that has been previously accepted by the Administrative Contracting Officer as complying with the EVMS guidelines in ANSI/EIA-748, the offeror may submit a copy of the documentation of such acceptance instead of the written summary required by paragraph (a) of this provision.

(c) The offeror shall identify the subcontractors, or subcontracted effort if subcontractors have not been selected, to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or the subcontracted effort selected for application of the EVMS compliance requirement. The offeror shall be

responsible for ensuring that the selected subcontractors comply with ANSI/EIA-748. The offeror shall incorporate its compliance evaluation factors for the subcontractors into the plan required by paragraph (a) of this provision. (End of provision)

252.242-7006 Earned Value Management System—Compliance Requirement.

As prescribed in 242.1107-70(b)(2), use the following clause:

EARNED VALUE MANAGEMENT SYSTEM—COMPLIANCE REQUIREMENT (XXX 2006)

(a) The Contractor shall use management procedures in the performance of this contract that provide for—

(1) Planning and control of cost and schedule performance;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the contract performance report (CPR) required by the CPR data item of this contract.

(b) The Contractor shall use and maintain an earned value management system (EVMS) that complies with American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748), throughout the life of the contract. However, the terms for compliance with ANSI/EIA-748 may be subject to negotiation between the Contractor and the Contracting Officer. The Government will not formally accept the Contractor's EVMS with respect to this contract. The use of the Contractor's EVMS for this contract does not imply Government acceptance of the Contractor's EVMS for application to future contracts.

(c) The Contractor may elect to use an EVMS that has been formally reviewed and accepted by the Administrative Contracting Officer (ACO) as complying with the EVMS guidelines in ANSI/EIA-748.

(d) The Government will require integrated baseline reviews. Such reviews shall be scheduled as early as practicable, and the review process should be initiated not later than 180 calendar days after (1) contract award, (2) the exercise of significant contract options, and (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess the Contractor's baseline to be used for performance measurement, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or the ACO's authorized representative, to demonstrate—

(1) Proper implementation of the procedures generating the cost and schedule information being used to satisfy the contract data requirements;

(2) Continuing application of the company procedures in satisfying the CPR data item through recurring program/project and contract surveillance; and

(3) Implementation of any corrective actions identified during the surveillance process.

(f) The Contractor shall submit notification of any substantive changes to the EVMS procedures and the impact

of those changes to the ACO or the ACO's authorized representative.

(g) The Contractor shall require the following subcontractors to comply with the requirements of this clause:

(Contracting Officer to insert names of subcontractors selected for application of the EVMS compliance requirement in accordance with 252.242-7005(c).)

(h) If indicated by the CPR, the Contractor shall submit a request for approval to begin implementation of an over-target baseline or over-target schedule to the Contracting Officer. This

request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will have 30 calendar days to respond after receipt of the request. Failure of the Government to respond within this 30-day period will constitute automatic approval. For cost-reimbursement contracts, the contract budget base should include authorized changes to the contract scope but should exclude changes for cost growth. (End of clause)

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