

**DATES:** *Effective Date:* January 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0326; facsimile 703-602-7887. Please cite DFARS Case 2007-D010.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DFARS 232.111 and 252.232-7006 provide that, under time-and-materials and labor-contracts, there normally should be no need to withhold payment for a contractor with a record of timely submittal of a release discharging the Government from all liabilities, obligations, and claims under the contract. Similar policy was added to FAR 32.111 and 52.232-7 in the final rule published at 70 FR 43580 on July 27, 2005. Therefore, the DFARS text is no longer necessary, and sections 232.111 and 252.232-7006 are removed.

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

**B. Regulatory Flexibility Act**

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2007-D010.

**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 232 and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 232 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

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

**PART 232—CONTRACT FINANCING**

**232.111 [Removed]**

■ 2. Section 232.111 is removed.

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

**252.232-7006 [Removed and Reserved]**

■ 3. Section 252.232-7006 is removed and reserved.

[FR Doc. E8-1091 Filed 1-23-08; 8:45 am]

**BILLING CODE 5001-08-P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 234 and 235**

**RIN 0750-AF79**

**Defense Federal Acquisition Regulation Supplement; Research and Development Contract Type Determination (DFARS Case 2006-D053)**

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

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

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 818 of the National Defense Authorization Act for Fiscal Year 2007. Section 818 requires DoD to modify regulations regarding the determination of contract type for major development programs to address assessment of program risk.

**DATES:** *Effective date:* January 24, 2008.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 24, 2008, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2006-D053, 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-D053 in the subject line of the message.
- *Fax:* 703-602-7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), IMD 3D139, 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 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 interim rule implements Section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 818 requires DoD to modify regulations regarding the determination of contract type for development programs. Such regulations must require the Milestone Decision Authority for a major defense acquisition program to select the contract type for a development program that is consistent with the level of program risk. The Milestone Decision Authority may select a fixed-price type contract, including a fixed-price incentive contract; or a cost-type contract, provided certain written determination requirements are satisfied.

The rule adds policy at DFARS 234.004 to implement the requirements of Section 818 of Public Law 109-364, applicable to major defense acquisition programs, and updates the policy at 235.006 to address requirements for other than major defense acquisition programs.

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 rule relates to internal DoD considerations and documentation requirements relating to the selection of contract type for development programs. 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 2006-D053.

**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.*

#### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 818 requires DoD to modify regulations regarding the determination of contract type for major development programs to address requirements for selection of the contract type that is consistent with the level of program risk. Comments received in response to this interim rule will be considered in the formation of the final rule.

#### List of Subjects in 48 CFR Parts 234 and 235

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 234 and 235 are amended as follows:

■ 1. The authority citation for 48 CFR parts 234 and 235 continues to read as follows:

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

#### PART 234—MAJOR SYSTEM ACQUISITION

■ 2. Section 234.004 is revised to read as follows:

##### 234.004 Acquisition strategy.

(1) See 209.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

(2) In accordance with Section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), for major defense acquisition programs as defined in 10 U.S.C. 2430—

(i) The Milestone Decision Authority shall select, with the advice of the contracting officer, the contract type for a development program at the time of Milestone B approval or, in the case of a space program, Key Decision Point B approval;

(ii) The basis for the contract type selection shall be documented in the acquisition strategy. The documentation—

(A) Shall include an explanation of the level of program risk; and

(B) If program risk is determined to be high, shall outline the steps taken to reduce program risk and the reasons for proceeding with Milestone B approval despite the high level of program risk; and

(iii) If a cost-type contract is selected, the contract file shall include the Milestone Decision Authority's written determination that—

(A) The program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

(B) The complexity and technical challenge of the program is not the result of a failure to meet the requirements of 10 U.S.C. 2366a.

#### PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

■ 3. Section 235.006 is revised to read as follows:

##### 235.006 Contracting methods and contract type.

(b)(i) For major defense acquisition programs as defined in 10 U.S.C. 2430—

(A) Follow the procedures at 234.004; and

(B) Notify the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

(ii) For other than major defense acquisition programs—

(A) Do not award a fixed-price type contract for a development program effort unless—

(1) The level of program risk permits realistic pricing;

(2) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(3) A written determination that the criteria of paragraphs (b)(ii)(A)(1) and (2) of this section have been met is executed—

(i) By the USD(AT&L) if the contract is over \$25 million and is for: research and development for a non-major system; the development of a major system (as defined in FAR 2.101); or the development of a subsystem of a major system; or

(ii) By the contracting officer for any development not covered by paragraph (b)(ii)(A)(3)(i) of this section.

(B) Obtain USD(AT&L) approval of the Government's prenegotiation position before negotiations begin, and

obtain USD(AT&L) approval of the negotiated agreement with the contractor before the agreement is executed, for any action that is—

(1) An increase of more than \$250 million in the price or ceiling price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(2) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is \$100 million or more; or

(3) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, that increases the price or ceiling price by more than \$250 million for equivalent quantities.

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

##### 50 CFR Part 229

[Docket No. 080117051-8053-01]

RIN 0648-XF17

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,251 nm<sup>2</sup> (7,720 km<sup>2</sup>), southeast of Portsmouth, New Hampshire, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

**DATES:** Effective beginning at 0001 hours January 26, 2008, through 2400 hours February 9, 2008.

**ADDRESSES:** Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on