

Subpart 232.9—Prompt Payment

■ 4. Revise section 232.903 to read as follows:

232.903 Responsibilities.

In accordance with section 852 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), DoD shall assist small business concerns by providing payment as quickly as possible, to the fullest extent permitted by law, with a goal of 15 days after receipt of proper invoices and all required documentation, including acceptance, and before normal payment due dates established in the contract (see 232.906(a)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 252.232–7XXX to read as follows:

252.232–7XXX Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration.

As prescribed in 232.009–2, use the following clause:

ACCELERATING PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS—PROHIBITION ON FEES AND CONSIDERATION (DATE)

(a) In accordance with section 852 of Public Law 115–232, the contractor shall not require any further consideration from or charge fees to the small business subcontractor when making accelerated payments to subcontractors under the clause at FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors.

(b) Include the substance of this clause, including this paragraph (b), in all subcontracts with small business concerns, including those for the acquisition of commercial items.

(End of clause)

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 244**

[Docket DARS–2019–0024]

RIN 0750–AJ48

Defense Federal Acquisition Regulation Supplement: Contractor Purchasing System Review Threshold (DFARS Case 2017–D038)

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 establish a DoD contractor purchasing system review dollar threshold that provides a regulatory basis for allowing DoD personnel to support other essential priorities and missions of greater contractual risk, while reducing regulatory impact on contractors.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 30, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2017–D038, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for “DFARS Case 2017–D038.” Select “Comment Now” and follow the instructions to submit a comment. Please include your name, company name (if any), and “DFARS Case 2017–D038” on any attached document.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2017–D038 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Kimberly Bass, OUSD(A&S)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Instructions: 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 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: Kimberly Bass, telephone 571–372–6174.

SUPPLEMENTARY INFORMATION:**I. Background**

This proposed rule implements a recommendation from the Defense Contract Management Agency (DCMA) to raise the contractor purchasing system review (CPSR) threshold at Federal Acquisition Regulation 44.302(a) from \$25 million to \$50 million. Currently, FAR 44.302(a) requires the administrative contracting officer (ACO) to determine whether a contractor's sales to the Government are expected to exceed \$25 million during the next 12 months and, if so, perform a review to determine if a CPSR is needed. The ACO uses this dollar

threshold in conjunction with the surveillance criteria cited at FAR 44.302(a), *i.e.*, contractor past performance, and the volume, complexity, and dollar value of subcontracts. DCMA performs the preponderance of DoD CPSRs. Competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to Part 12 are excluded from this requirement.

FAR 44.302(a) specifically authorizes the head of the agency responsible for contract administration to raise or lower the \$25 million CPSR threshold if it is considered to be in the Government's best interest. The dollar threshold of \$25 million cited at FAR 44.302(a) has been unchanged since 1996. In 2016, the DCMA CPSR Group conducted an analysis to determine if raising the CPSR threshold would be beneficial. Based on the Group's findings, it was determined that adjusting the threshold upward to \$50 million would appropriately account for inflation, reduce burden on small contractors, and allow a more efficient and effective use of CPSR resources to review larger contractors where more taxpayer dollars are at risk.

II. Discussion and Analysis

This rule proposes to amend DFARS 244.302, Requirements, to establish within the DFARS a DoD CPSR dollar threshold of \$50 million. With this threshold in place, it is estimated that DCMA ACOs can reduce the number of contractor reviews by approximately 20 percent, while reducing by only 2% the value of contract dollars covered by CSPRs. Thus, the Government will be adequately protected by the \$50 million threshold.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact any existing provisions or clauses. The rule merely increases the DoD dollar threshold for conducting CPSRs to \$50 million.

IV. 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.

V. Executive Order 13771

This rule is not expected to be subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. 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.*, based on a review of historical data concerning the purchasing system, business system program. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a DoD contractor purchasing system review (CPSR) dollar threshold.

The objective of this rule is to create a new DFARS section at 244.302 to establish a CPSR dollar threshold of \$50 million. The threshold will be used in conjunction with other surveillance criteria cited at Federal Acquisition Regulation (FAR) 44.302(a), to include contractor past performance and the volume, complexity, and dollar value of subcontracts. The proposed rule establishes a DoD dollar threshold of \$50 million for a formal CPSR; in effect, raising the current surveillance threshold of \$25 million cited at FAR 44.302(a) for DoD contractors.

In 2014, there were there were 667 unique entities for which administrative contracting officers (ACO) had recorded approved CPSR decisions in the Contract Business Analysis Repository. A 20% reduction in the number of CPSRs is expected to result from increasing the CPSR threshold from \$25 million to \$50 million for a total reduction of approximately 133 firms no longer meeting the criteria for a CPSR review. Contractor purchasing systems are eligible for a comprehensive follow-on review every three years. Based on this three-year review cycle, approximately 45 fewer contractors would be reviewed each year (133 firms/3-year cycle = 44.3, rounded to 45

fewer reviews conducted each year). Of the 45 entities, it is estimated that 35 of these contractors are large businesses and 10 are small entities.

The \$50 million dollar threshold should reduce the compliance burden for approximately 133 contractors, and permit a more prudent and efficient use of resources, prioritizing surveillance to the larger firms.

For the approximately 133 contractors affected by this rule, there could be additional requirements for those firms to request consent to contract from the ACO, pursuant to FAR clause 52.244-2, Subcontracts. It is estimated that the annual number of consent to contract requests are approximately 12 per contractor.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no significant alternatives to the proposed rule that accomplish the stated objectives.

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 2017-D038), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The rule contains information collection requirements cleared by the Office of Management and Budget under OMB control number 9000-0149, entitled "Subcontract Consent and Contractor's Purchasing System Review." The current clearance for OMB control number 9000-0149 already accounts for the reduction in burden associated with raising the DoD threshold for conducting CPSRs.

List of Subjects in 48 CFR Part 244

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 244 is proposed to be amended as follows:

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 244 continues to read as follows:

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

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 2. Section 244.302 is added to read as follows:

244.302 Requirements.

(a) In lieu of the threshold at FAR 44.302(a), the ACO shall determine the need for a CPSR if a contractor's sales to the Government are expected to exceed \$50 million during the next 12 months.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Chapter III, Subchapter B

[Docket No. FMCSA-2018-0037]

RIN 2126-AC17

Safe Integration of Automated Driving Systems-Equipped Commercial Motor Vehicles; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); correction.

SUMMARY: FMCSA is correcting an advanced notice of proposed rulemaking (NPRM) that published in the **Federal Register** on May 28, 2019. The document requests public comment about Federal Motor Carrier Safety Regulations (FMCSRs) that may need to be amended, revised, or eliminated to facilitate the safe introduction of automated driving systems (ADS) equipped commercial motor vehicles (CMVs) onto our Nation's roadways. The ANPRM contained an erroneous date for closure of the comment period.

DATES: The comments due date for the ANPRM published on May 28, 2019 (84 FR 24449), is corrected as of May 28, 2019. Comments on the ANPRM must be received on or before July 29, 2019.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2018-0037 using any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- **Fax:** 202-493-2251.