

3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; facsimile (703) 602–0350. Please cite DFARS Case 2002–D016.

SUPPLEMENTARY INFORMATION:

A. Background

DoD uses the clause at DFARS 252.217–7012, Liability and Insurance, in master agreements for repair and alteration of vessels. The clause holds a contractor liable for loss or damage resulting from defective contractor workmanship and materials, and contains a liability ceiling for any other contractor-incurred loss or damage. This rule increases the contractor's liability ceiling from \$5,000 to \$50,000 per incident.

DoD published a proposed rule at 68 FR 7491 on February 14, 2003. One respondent submitted comments on the proposed rule. A summary of DoD's analysis of the comments is provided below:

Comment: The respondent took issue with the increase in the contractor's liability ceiling from \$5,000 to \$50,000, and instead recommended a ceiling of \$7,465 based on actual inflation experienced by the shipbuilding industry since 1982 when the \$5,000 ceiling was established.

DoD Response: Do not concur. The increase was not based solely on inflation factors. The increase from \$5,000 to \$50,000 was determined to be appropriate as a result of a Navy study of incidents of contractor-incurred damages under vessel repair and alteration contracts during a recent 3-year period, which indicated that 70 percent of the incidents were for amounts below \$50,000, whereas only 30 percent of the incidents were for amounts of \$5,000 or less. The objective of the increase is to provide a financial incentive for contractors to minimize loss and damage.

Comment: The respondent does not agree with DoD's position that the increased dollar ceiling is necessary to provide a financial incentive for contractors to minimize loss or damage. The clause at DFARS 252.217–7012 already provides a strong financial incentive for contractors to minimize loss or damage. Under the clause, the Government's assumption of risk is

essentially limited to loss or damage resulting from accidents. To require contractors to assume more of the costs associated with accidental damage to vessels will not necessarily result in a reduced number of occurrences, but will force contractors to price the costs of assumption of additional risks (due to higher ceilings) into their cost proposals for Navy ship repair work.

DoD Response: Do not concur. Increasing the ceiling is consistent with the commercial insurance practice of setting a deductible that lowers claim frequency, eliminates insubstantial claims, and provides an incentive for the insured to avoid losses. Any increased contract costs that might result from the higher ceiling should be offset by the reduced number of claims submitted to the Government.

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 may 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.* DoD has prepared a final regulatory flexibility analysis, which is summarized as follows:

This rule increases a contractor's liability for loss or damage to a Government vessel, materials, or equipment, from \$5,000 to \$50,000 per incident. The rule will apply to small entities that have a master agreement with DoD for repair and alteration of vessels. There is no available estimate of the total number of small entities that will be subject to the rule. However, the Naval Sea Systems Command (NAVSEA), which is responsible for the maintenance and repair of the majority of vessels, has collected data indicating that, during the period from May 1997 to October 2002, there were 61 occurrences of contractor-caused damages. Of those, 13 occurrences (21 percent) were attributed to small entities. Entities with master agreements for repair and alteration of vessels will need to increase their insurance coverage from \$5,000 to \$50,000. DoD considered using a liability ceiling of

less than \$50,000, but believes the \$50,000 ceiling to be appropriate because—

1. This ceiling should capture a majority of claims, since a NAVSEA study has shown that 70 percent of incidents of contractor-incurred damages during a recent 3-year period were for amounts less than \$50,000;

2. The increase should provide an incentive for contractors to reduce the number of such occurrences, thereby reducing vessel “down-time” for maintenance and repair and making more efficient use of scarce maintenance dollars; and

3. The increase is consistent with the commercial insurance practice of setting a deductible that lowers claim frequency, eliminates insubstantial claims, and provides an incentive for the insured to avoid losses.

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 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 252 is amended as follows:

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

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

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.217–7012 [Amended]

■ 2. Section 252.217–7012 is amended as follows:

■ a. By revising the clause date to read “(AUG 2003)”; and

■ b. In paragraph (b)(6), by removing “\$5,000” and adding in its place “\$50,000”.

[FR Doc. 03–21311 Filed 8–20–03; 8:45 am]

BILLING CODE 5001–08–P