

appropriately made without significantly impacting the payment process. However, DoD does not believe requiring ACO approval of each voucher is the proper solution for this issue. Requiring the contractor to submit all vouchers requiring withholds through the ACO for approval would place an unnecessary administrative burden on the ACO and could impact the timeliness of payment.

DoD agrees that the ACO should ensure that the contract specifies the percentage and total amount of the withhold, and accordingly, has added the following language to DFARS 232.111(b)(iii): "The ACO shall ensure that the modification specifies the percentage and total amount of the withhold."

DoD also agrees that the ACO should provide DFAS with written payment instructions regarding if and when withholds are needed. However, DoD does not believe these instructions should be included as part of this DFARS rule.

7. *Comment:* There is a concern that the rule shifts responsibility for withholding from the Government to the contractor. It is important that this responsibility remain with the Government.

DoD Response: Partially concur. While there was no intent to shift the burden to the contractor, DoD recognizes that the proposed language could be misinterpreted. Therefore, 232.111(b)(iii) and 252.232-7006 have been revised to clarify that the ACO must issue a modification requiring the contractor to withhold amounts from its billings.

8. *Comment:* The language 232.111(b)(iii) should be amended to state "If the ACO determines that it is necessary to withhold payment to protect the Government's interests, written direction should be issued to the contractor by modification of the contract directing the withholding of 5 percent of amounts due until a sufficient reserve is set aside." This revised language would be consistent with the language in Defense Contract Management Agency Information Memorandum 03-121 issued on January 14, 2003. Requiring withholds to protect

the interests of the Government alters the contract terms and conditions and, therefore, should be documented through a contract modification.

DoD Response: Concur in principle. The language at 232.111(b)(iii) has been revised to state that the ACO must issue a modification requiring the contractor to withhold the amounts due.

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 certifies that this final rule will not 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 applies only to time-and-materials and labor-hour contracts. Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis.

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.

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Executive Editor, Defense Acquisition Regulations Council.

■ 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

■ 2. Section 232.111 is added to read as follows:

232.111 Contract clauses for non-commercial purchases.

(b) Use the clause at FAR 52.232-7, Payments under Time-and-Materials

and Labor-Hour Contracts, with 252.232-7006, Alternate A, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(i) Alternate A permits the administrative contracting officer (ACO) to withhold 5 percent of the amounts due until a reserve is set aside in an amount the ACO considers to be necessary, but not to exceed \$50,000, to protect the Government's interests.

(ii) Normally, there should be no need to withhold payment for a contractor with a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims.

(iii) If the ACO determines that it is necessary to withhold payment to protect the Government's interests, the ACO shall unilaterally issue a modification requiring the contractor to withhold 5 percent of amounts due, up to a maximum of \$50,000. The ACO shall ensure that the modification specifies the percentage and total amount of the withhold.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.232-7006 is added to read as follows:

252.232-7006 Alternate A.

Alternate A (Dec 2003)

As prescribed in 232.111(b), substitute the following paragraph (a)(2) for paragraph (a)(2) of the clause at FAR 52.232-7:

(a)(2) The Administrative Contracting Officer (ACO) may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the ACO considers necessary to protect the Government's interests. The ACO may withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this clause.

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