

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2002–D001]

Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests

AGENCY: 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 1008 of the National Defense Authorization Act for Fiscal Year 2001. Section 1008 requires contractors to submit, and DOD to process, payment requests in electronic form.

DATES: *Effective date:* March 1, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before April 22, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002–D001 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D001.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:**A. Background**

This interim rule adds a new DFARS subpart and a contract clause to implement section 1008 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). The rule—

- Requires contractors to submit electronically, and DOD to process electronically, requests for payment under DOD contracts;
- Requires DOD to transmit any supporting documentation electronically within DOD;

- Identifies three acceptable electronic forms for transmission of payment requests; and

- Identifies six specific situations where using electronic payment methods is unduly burdensome.

DOD published a proposed DFARS rule in the **Federal Register** on May 31, 2002 (67 FR 38057). Seventeen respondents submitted comments on the rule. Based on an analysis of these comments, DOD has made substantive changes to the rule, and, therefore, has published an interim rule with another request for comments. The main difference between the proposed and interim rules is that one of the six exemption categories has changed. In the proposed rule, at DFARS 232.7002(a)(6), an exemption applied to cases where the Secretary of Defense determines that the requirement for using electronic means is unduly burdensome. In the interim rule, the exemption has been revised to apply in those cases where the contractor is unable to submit, or DOD is unable to receive, a payment request in electronic form, and the contracting officer, the payment office, and the contractor mutually agree to an alternative method. This revised exemption provides contracting officers the flexibility to work solutions to unique payment situations to ensure that contractors are paid on time for work they have performed. In addition, the interim rule revises the clause at DFARS 252.246–7000, Material Inspection and Receiving Report, to state that contractor submission of material inspection and receiving information by using the Wide Area Workflow–Receipt and Acceptance (WAWF–RA) electronic form fulfills the requirement for a material inspection and receiving report (DD Form 250).

A discussion of the comments on the proposed rule is provided below.

1. *Comment:* Completely support the rule as it will reduce administrative cost, time, and effort, and will further speed payment to the contractor. *DOD Response:* Concur.

2. *Comment:* Does the requirement to submit payment requests in electronic form apply to contracts without solicitations? *DOD Response:* Yes. “Solicitation” means any request to submit offers or quotations to the government, and, therefore, would cover the great majority of procurements. As indicated at DFARS 201.304(6), “The Director of Defense Procurement and Acquisition Policy publishes changes to the DFARS in the **Federal Register** and electronically via the World Wide Web. Each change includes an effective date. Unless guidance accompanying a change states otherwise, contracting

officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.” If no solicitation is issued, the rule applies to contracts issued after the effective date.

3. *Comment:* Recommend clarification in DFARS 232.7004 that the contract clause is only to be used in solicitations and contracts resulting from solicitations first issued after October 1, 2002. *DOD Response:* Do not concur. The normal practice is to cite the effective date in the **DATES** section of the **Federal Register** notice, and not in the regulations. This eliminates the need to revise the regulations later to remove obsolete dates. The effective date for this interim rule is March 1, 2003, to allow payment systems to complete the latest upgrades and provide military departments and defense agencies sufficient time to finalize implementation plans with contractors.

4. *Comment:* There are many problems with the WAWF–RA software application, such as—

a. The current version of WAWF–RA does not process Foreign Military Sales (FMS);

b. If a mistake is made when processing the electronic DD Form 250 (Material Inspection and Receiving Report), the program will not allow changes and the submitter has to initiate a completely new DD Form 250. If a change has to be made after the DD Form 250 is accepted, the payment request must be processed manually; and

c. Construction contracts should be exempt, because the percentage of completion progress payments under construction contracts require so much paperwork, and because the contracting officer needs to approve the invoice and make sure the progress payments are correct.

DOD Response: The WAWF–RA software is an evolving application and will mature over time. Various software modules/versions are currently in development that will process additional types of invoices in the future, such as FMS, construction contracts, and discounts. For example, the FMS module will be added to the WAWF–RA system in the spring of 2003. It is noted that, until such time as WAWF–RA processes the above mentioned types of invoices, the contracting officer may authorize a contractor to submit a payment request in other than electronic form (see DFARS 232.7002(a)(6)).

5. *Comment:* The respondent inquired about using WAWF–RA for a contract with the Defense Contract Management Agency (DCMA), but was advised that