equity). Executive Order 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 Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

This is a final rule to revise the Defense Federal Acquisition Regulation Supplement (DFARS) at 213 to permit the use of U.S. Government fuel cards in lieu of an SF 44, Purchase Order-Invoice-Voucher, for fuel, oil, and refueling-related items for purchases not exceeding the simplified acquisition threshold. The objective of this rule is to amend DFARS 213.306(a)(1)(A) to (1) Permit the purchase of marine fuel using the Ships' bunkers Easy Acquisition (SEA) Card® in lieu of the SF44, Purchase Order-Invoice-Voucher, up to the simplified acquisition threshold and (2) provide additional ground refueling-related services when using the AIR Card®. The legal basis is 41 U.S.C. 1303 and 48 CFR chapter 1.

Purchases of aviation fuel are on-the-spot, over the counter transactions (''gas and go''), but generally exceed the micro-purchase threshold due to the price of aviation fuel and oil fuel tank capacities. Previously, the threshold for SF44/AIR Card® purchases of fuel and oil was set at the simplified acquisition threshold at DFARS 213.306(a)(1)(A)) under DFARS Case 2007–D017 (see final rule published at 72 FR 6484 on February 12, 2007).

The military services and the U.S. Coast Guard have small vessels that fulfill valid mission needs in direct support of national security. Unlike larger vessels, small vessels' movements and needs are often unpredictable. These small vessels must procure fuel away from their home stations, but because of their smaller size and unique mission requirements are unable to use the Defense Logistics Agency energy bunkers contracts available at major seaports. Due to port restrictions, bunkering merchants do not typically provide support to smaller vessels. Instead, these smaller vessels frequent non-contract merchants or ''marina-type merchants'' that otherwise serve civilian recreational watercraft and similar needs.

No public comments were received in response to the initial regulatory flexibility analysis.

Approximately 80% of ''marina-type merchants'' are considered small businesses. Marina-type merchants accepting the SEA Card® will pay a normal fee to the banking institution or processing center, similar to VISA charges these merchants incur from other credit card clients. In addition, merchants are expected to benefit from accelerated payments, since they will be paid by the banking institution in accordance with their merchant agreement. The rule facilitates open market purchases, benefits merchants by making it much easier for merchants to do business with the military and will not have a significant cost or administrative impact on contractors, subcontractors, or offerors.

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 does not have a significant effect beyond DoD's internal operating procedures, substituting the use of a fuel card (AIR Card® and SEA Card®) in lieu of the SF44, Purchase Order-Invoice-Voucher.

IV. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 213

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 213 is amended as follows:

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 213 continues to read as follows:

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

■ 2. Section 213.306 is amended to revise paragraph (a)(1)(A) to read as follows:

213.306 SF 44, Purchase Order-Invoice-Voucher.

(a)(1) * * *

(A) *Fuel and oil.* U.S. Government fuel cards may be used in lieu of an SF 44 for fuel, oil, and authorized refueling-related items (see PGI 213.306 for procedures on use of fuel cards);

* * * * *

[FR Doc. 2011–23944 Filed 9–19–11; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

RIN 0750–AG82

Defense Federal Acquisition Regulations Supplement; Discussions Prior to Contract Award (DFARS Case 2010–D013)

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

ACTION: Final rule.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to strongly encourage discussions prior to award for source selections of procurements estimated at $100 million or more.

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 703–602–0289.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule at 75 FR 71647 on November 24, 2010, to implement the recommendation of the DoD Source Selection Joint Analysis Team (JAT) to strongly encourage the use of discussions in all competitive negotiated procurements over $100 million. The period for public comment closed on January 24, 2011, and three respondents provided comments.

The rule proposed to amend DFARS part 215 to strongly recommend, for acquisitions of more than $100 million, that contracting officers hold discussions rather than use the authority at FAR 52.215–1 to award on initial offers without discussions.

II. Discussion and Analysis

A. Proposed rule is excessive

Comment: One respondent said that the proposed rule is ''overkill.''

Response: No change was made in the final rule in response to this comment. The JAT advises that data shows that the number of protests filed against the award of competitive negotiated contracts and orders over $100 million is substantially higher when discussions are not held. A preference for holding

discussions is recognition of a best practice.

B. Negative effects possible

Comment: One respondent wrote that requiring discussions could have negative effects, such as added Government and industry cost due to the significant increase in the source selection schedule and reduced solicitation and proposal quality due to a mindset that problems can be fixed during discussions.

Response: The JAT data demonstrates that procurement lead time is significantly extended when protests occurred. The second concern raised by the respondent, that proposals will be of lower quality, is unrealistic because the offeror that chooses to submit an inferior proposal always runs the risk of not making the competitive range and therefore not being considered for award.

C. Change reference

Comment: A respondent wanted to change the reference from 215.203–71 to 215.306(d) because the latter deals with discussions, which are covered at FAR 15.306(d).

Response: DoD agrees with the recommendation. The statement about holding discussions for actions of $100 million or more is relocated in the final rule to DFARS subpart 215.306(c) from 215.2.

D. Remove ''competitive range'' limitation

Comment: A respondent proposed deleting the phrase ''with offerors in the competitive range'' at the end of the sentence ''(F)or source selections when the procurement is $100 million or more, contracting officers should conduct discussions with offerors in the competitive range.'' The respondent noted that FAR 15.306(c)(1) and (d), read together, require the conduct of discussions with all offerors in the competitive range in every case.

Response: DoD agrees with respondent that the FAR already mandates discussions with all offerors whose proposals have been selected for the competitive range. The intent of this rule is to expand the situations in which discussions are held beyond those situations where they may be already mandated. The language in the proposed rule at DFARS 215.203–71 is relocated to 215.306(c)(1) in the final rule and revised to state ''For source selections, when the procurement is $100 million or more, contracting officers should conduct discussions. Follow the procedures at FAR 15.306(c) and (d).''

III. 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 a significant regulatory action and, therefore, was 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.

IV. Regulatory Flexibility Act

DoD does not expect 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 final rule does not add to or delete existing regulations on discussions for DoD procurements under $100 million, the majority of DoD procurements. For procurements of at least $100 million, any increase in discussions is anticipated to benefit all offerors, including small businesses, by providing them an opportunity to explain details of the offer and address their particular capabilities.

A final regulatory flexibility analysis was performed and is summarized as follows. This rule was initiated at the request of the Director, Defense Procurement and Acquisition Policy, to implement a recommendation of the Department of Defense (DoD) Source Selection Joint Analysis Team (JAT). The JAT, which was tasked to revise the DoD Source Selection Procedures, determined that there is a significant positive correlation between high-dollar source selections conducted without discussions and the number of protests sustained. In order to improve the quality of high-dollar, complex source selections, and reduce turbulence and inefficiency resulting from sustained protests, the policy is changed to strongly encourage discussions prior to the award of source selections estimated at $100 million or more.

DoD research has indicated that meaningful discussions with industry prior to contract award on high-dollar, complex requirements improves both industry's understanding of solicitation requirements and the Government's understanding of industry issues. By identifying and discussing these issues prior to submission of final proposals, the Government is often able to issue clarifying language. The modified requirements documentation allows industry to tailor proposals and better describe the offeror's intended approach, increases the probability that the offeror's proposal satisfies the Government requirements, and often results in better contract performance. Asking contracting officers to conduct discussions with industry provides a reasonable approach to recognizing and addressing valid industry concerns and a constructive alternative to protests resulting from industry frustration over misunderstood requirements. The legal basis is 41 U.S.C. 1303 and 48 CFR chapter 1.

Data were reviewed for the most recent year available, Fiscal Year 2009. While there is no data source available that tabulates the number of offers received from small businesses, DoD determined that 620 new contracts and 252 new task orders or delivery orders of $100 million or more were awarded to small businesses during Fiscal Year 2009. Therefore, DoD estimates that at least 872 small businesses could benefit from this policy change.

There is no reporting, recordkeeping, or other compliance requirement associated with the proposed rule. Therefore, there is no impact, positive or negative, on small businesses in this area. Thus, there are no additional professional skills necessary on the part of small businesses in this area. There are no direct costs to small business firms to comply with this rule. Conversely, small businesses that might have previously filed a protest against an award when discussions were not held may now be able to avoid the costs associated with protesting.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the proposed rule. When a solicitation includes the provision at FAR 52.215–1, Instructions to Offerors—Competitive Acquisitions, paragraph (f)(4) of the clause states that the ''Government intends to evaluate proposals and award a contract without discussions.'' If, however, the solicitation includes FAR 52.215–1 with its Alternate I, then the revised paragraph (f)(4) states that the ''Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range.'' Use of the clause without Alternate I will not accomplish the stated objectives;

only the clause with its Alternate I will accomplish the purpose of this case.

No comments were received from small entities on this rule.

V. Paperwork Reduction Act.

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 215

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 215 is amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 215 continues to read as follows:

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

■ 2. Section 215.209 is added as follows:

215.209 Solicitation provisions and contract clauses.

(a) For source selections when the procurement is $100 million or more, contracting officers should use the provision at FAR 52.215–1, Instructions to Offerors—Competitive Acquisition, with its Alternate I.

■ 3. Section 215.306 is added as follows:

215.306 Exchanges with offerors after receipt of proposals.

(c) *Competitive range.*

(1) For acquisitions with an estimated value of $100 million or more, contracting officers should conduct discussions. Follow the procedures at FAR 15.306(c) and (d).

[FR Doc. 2011–23949 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217 and 241

RIN 0750–AG89

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting (DFARS Case 2009–D026)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update and clarify the requirements for multiyear contracting.

DATES: *Effective date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, telephone (703) 602–8383.

SUPPLEMENTARY INFORMATION:

I. Background

This DFARS case was initiated by DoD to perform a comprehensive review of DFARS subpart 217.1, Multiyear Contracting. On March 2, 2011, the DoD published a proposed rule to update and clarify the requirements relating to multiyear contracting. This final rule reorganizes and updates existing coverage for multiyear acquisitions.

A minor editorial change was made to the final rule at DFARS 217.170 to remove the redundant introductory sentence that had been proposed at 217.170(a) and to revert to the original paragraph numbering of this section. At DFARS 217.172(f)(1), the references to 217.172(g)(4) and (5) were corrected to refer to 217.172(g)(3) and (4). Coverage at 217.175 was renumbered to 217.174 to follow in sequence, and this required a reference citation change at 241.103. No changes to existing DoD policy, including implementation of any statutorily mandated acquisition-related thresholds, are being made in this rule.

II. 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, is 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.

III. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not change the existing requirements of subpart 217.1. Furthermore, these requirements are primarily internal procedures for DoD. No comments were received from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610.

IV. Paperwork Reduction Act

This rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 217 and 241:

Government procurement.

Mary Overstreet

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 217 and 241 are amended as follows:

■ 1. The authority citation for 48 CFR parts 217 and 241 continues to read as follows:

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

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.170 is amended by—

■ a. Amending paragraph (a), by removing ''Section'' and adding in its place ''section'' and removing ''Public Law 105–56'' and adding in its place ''Pub. L. 105–56,'';

■ b. Amending paragraph (b), by removing ''217.172(f)(2)'' and adding in its place ''217.172(g)(2)'';

■ c. Amending paragraph (c) by removing ''Section'' and adding in its place ''section'' and removing ''Public Law 105–56'' and adding in its place ''Pub. L. 105–56,'';

■ d. Amending paragraph (c) by removing in the listing of references '';'' in two places and adding in its place '',''; and

■ e. Revising paragraph (e) to read as follows:

217.170 General.

* * * * *

(e)(1) DoD must provide notification to the congressional defense committees at least 30 days before entering into a multiyear contract for certain procurements, including those expected to—

(i) Employ an unfunded contingent liability in excess of $20 million (see 10 U.S.C. 2306b(l)(1)(B)(i)(II), 10 U.S.C. 2306c(d)(1), and section 8008(a) of Pub. L. 105–56 and similar sections in subsequent DoD appropriations acts);