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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 210, 212, 213, and 252**

[Docket DARS-2016-0023]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6115; facsimile 571-372-6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows—

1. Provides direction to contracting officers at DFARS 210.002 to follow the procedures at DFARS Procedures, Guidance, and Information (PGI) 210.002(e)(iii) regarding market research file documentation;

2. Add DFARS 212.102(a)(ii) to reflect that contracting officers should follow the procedures and guidance at PGI 212.102(a) regarding file documentation;

3. Revises DFARS 213.7001 to update cross references to DFARS PGI;

4. Provides an updated internet link at DFARS 252.219-7000 to the Procurement Technical Assistance Center locations; and

5. Provides an updated internet link at DFARS 252.245-7004(b) to the Plant Clearance Automated Reutilization Screening System.

List of Subjects in 48 CFR 210, 212, 213, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 210, 212, 213, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 210, 212, 213, and 252 continues to read as follows:

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

PART 210—MARKET RESEARCH

■ 2. Amend section 210.002 by adding paragraph (e)(iii) to read as follows:

210.002 Procedures.

(e) * * *

(iii) Follow the procedures at PGI 210.002(e)(iii) regarding contract file documentation.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Add section 212.102(a)(ii) to read as follows:

212.102 Applicability.

(a) * * *

(ii) Follow the procedures at PGI 212.102(a).

PART 213—SIMPLIFIED ACQUISITION PROCEDURES**213.7001 [Amended]**

■ 4. Amend section 213.7001 by—

■ a. In paragraph (a)(1), removing “219.804-2(2)” and adding “PGI 219.804-2(2)” in its place;

■ b. In paragraph (a)(2), removing “Subpart 219.8” and adding “PGI 219.8” in its place, and removing “219.804-2(2)” and adding “PGI 219.804-2(2)” in its place; and

■ c. In paragraph (b), removing “Subpart 19.8” and adding “subpart 19.8” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.219-7000 [Amended]**

■ 5. Amend section 252.219-7000 by—

■ a. Removing the clause date “(MAY 2015)” and adding “(SEP 2016)” in its place; and

■ b. In paragraph (c), removing “www.dla.mil/SmallBusiness/Pages/ptac.aspx” and adding “<http://www.dla.mil/HQ/SmallBusiness/PTAC.aspx>” in its place.

252.245-7004 [Amended]

■ 6. Amend section 252.245-7004 by—

■ a. Removing the clause date “(MAR 2015)” and adding “(SEP 2016)” in its place; and

■ b. In paragraph (b) introductory text, removing “<http://www.dcmamail.com/ITCSO/CBT/PCARSS/index.cfm>” and

adding “<http://www.dcmamail.com/DCMAIT/cbt/PCARSS/index.cfm>” in its place.

[FR Doc. 2016-22572 Filed 9-22-16; 8:45 am]

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 216 and 236**

[Docket DARS-2016-0006]

RIN 0750-A187

Defense Federal Acquisition Regulation Supplement: Prohibition on Use of Any Cost-Plus System of Contracting for Military Construction and Military Family Housing Projects (DFARS Case 2015-D040)

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 implement a section of the National Defense Authorization Act for Fiscal Year 2012 that amended title 10 of the United States Code by prohibiting any form of cost-plus contracting for military construction projects or military family housing projects.

DATES: Effective September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Ruckdaschel, telephone 571-372-6088.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD published a proposed rule in the **Federal Register** at 81 FR 17050 on March 25, 2016. This final rule implements section 2801 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81). Section 2801 amends 10 U.S.C. 2306 by prohibiting any form of cost-plus contracting for military construction projects or military family housing projects. Three respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes from the Proposed Rule

There are minor changes to the DFARS text from the proposed rule

based on the public comments. A list of the specific cost-reimbursement contract types prohibited has been included at DFARS 216.301–3, Limitations. At DFARS 236.215 the terminology was expanded to state “contracts in connection with a military construction project or military family housing project” in lieu of “contracts for construction.” Additionally, at DFARS 236.271, the reference to 236.271 to the prohibition on use of “cost-plus” contracts was revised to refer to “cost-reimbursement” contracts.

B. Analysis of Public Comments

1. Support for the Rule

Comment: One respondent expressed support for the proposed rule, indicating that a blanket prohibition on cost-plus contracting in military construction and family housing projects is in the best interest of all parties, including small businesses and taxpayers.

Response: Noted.

2. Opposition to the Rule

Comment: One respondent opposed a blanket prohibition of cost-plus contracts stating that the rule excludes advances and innovations in the marketplace by prohibiting the selection of this form of contracting for construction projects.

Response: DoD does not have discretion in this rule as the prohibition is statutory and required by 10 U.S.C. 2306(c).

3. Term “Cost-plus Contract”

Comment: One respondent expressed concern that the term “cost-plus contract,” as used in the proposed rule is nonstandard within title 48 of the Code of Federal Regulation, and as such should be further defined.

Response: In the context of the proposed DFARS revisions, “cost-plus” was interpreted as meaning those “cost-reimbursement” contract types defined in Federal Acquisition Regulation 16.304, 16.305, and 16.306. Further delineation, however, is added to DFARS 216.301–3 to list the specific contract types prohibited: Cost-plus-fixed-fee, cost-plus-award-fee, and cost-plus-incentive-fee. Additionally, the reference in DFARS 236.271 to use of any cost-plus contract is revised to refer to the list of cost-reimbursement contracts at DFARS 216.301–3.

4. Cross Reference to Statute

Comment: One respondent proposed that DoD remove the cross reference to 10 U.S.C. 2306(c) as the prohibition should remain notwithstanding any

future changes that might be made to 10 U.S.C. 2306(c).

Response: It is a DFARS drafting convention to indicate in the regulations if they are based on a statute. This is helpful when considering future amendments to, or deviations from, the regulations. If the statute changes, appropriate changes to the regulations may be required.

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 regulatory 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. Regulatory Flexibility Act

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

The purpose of this rule is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 2801 of the National Defense Authorization Act for Fiscal Year 2012, which amends 10 U.S.C. 2306, to prohibit any form of cost-plus contracting for military construction projects or military family housing projects.

No comments were received from the public regarding the initial regulatory flexibility analysis.

There is minimal impact anticipated on small entities as a result of the proposed rule. Based on data available in the Federal Procurement Data System, there were only 19 cost-reimbursement type construction contracts awarded in fiscal year 2015, two of which were awarded to small businesses. There is already a general prohibition at DFARS 216.306 on certain cost-plus-fixed-fee contracts funded by a military construction appropriations act. The proposed rule expands this prohibition to all cost-plus contract types in connection with a military construction project or a military family housing project.

There are no new projected reporting, recordkeeping, and other compliance requirements of the rule.

There are no known significant alternatives to the rule that would meet the requirements of the statute.

VI. Paperwork Reduction Act

The 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 Parts 216 and 236

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 216 and 236 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 236 continues to read as follows:

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

PART 216—TYPES OF CONTRACTS

■ 2. Add section 216.301–3 to read as follows:

216.301–3 Limitations.

For contracts in connection with a military construction project or a military family housing project, contracting officers shall not use cost-plus-fixed-fee, cost-plus-award-fee, or cost-plus-incentive-fee contract types (10 U.S.C. 2306(c)). This applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the Armed Forces.

■ 3. Amend section 216.306 by adding introductory text to paragraph (c) to read as follows:

216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations.* For contracts in connection with a military construction project or military family housing project, see the prohibition at 216.301–3.

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PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 4. Add section 236.215 to read as follows:

236.215 Special procedures for cost-reimbursement contracts for construction.

For contracts in connection with a military construction project or military family housing project, see the prohibition at 216.301–3.

■ 5. Revise section 236.271 to read as follows:

236.271 Cost-plus-fixed-fee contracts.

Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts (see 216.306(c)). See also 216.301–3 regarding the prohibition on the use of certain cost-reimbursement contracts in connection with a military construction project or military family housing project.

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 227 and 252**

[Docket DARS–2016–0010]

RIN 0750–AI91

Defense Federal Acquisition Regulation Supplement: Rights in Technical Data (DFARS Case 2016–D008)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 that addresses rights in technical data relating to major weapon systems, expanding application of the presumption that a commercial item has been developed entirely at private expense.

DATES: Effective September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD published a proposed rule in the *Federal Register* at 81 FR 28812 on May 10, 2016, to implement section 813(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). Section 813(a) modifies 10 U.S.C. 2321(f) to address rights in

technical data relating to major weapon systems.

Until now, except for commercially available off-the-shelf (COTS) items, a contracting officer's challenge to asserted restrictions on technical data relating to a major system was sustained unless the contractor or subcontractor submitted information demonstrating that the item was developed exclusively at private expense.

Section 813(a) revised 10 U.S.C. 2321(f) in two primary ways: (1) The major systems rule was narrowed to apply only to major weapon systems; and (2) the exception to the major systems rule for commercially available off-the-shelf (COTS) items was expanded to include three additional exceptions. More specifically, the formerly COTS-only exception was expanded to include (i) COTS items with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; (ii) commercial subsystems or components of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with 10 U.S.C. 2379(a); and (iii) components of a subsystem, if the subsystem was acquired as a commercial item in accordance with 10 U.S.C. 2379(b).

There were no public comments submitted in response to the proposed rule. There are no significant changes from the proposed rule made in the final rule.

Although there were no comments received on the substance of the proposed rule, DoD did receive a request to suspend the rulemaking process on any case (including this case) relating to rights in technical data until such time as the final report of the Government-Industry Advisory Panel (the Panel), established in accordance with section 813(b) of the NDAA for FY 2016, has been submitted to Congress. After consultation with the Chair of the Panel, DoD determined to proceed with publication of the final rule on this case. This case implements section 813(a) of the NDAA for FY 2016, the same section that set up the Panel, with no indication that DoD should delay implementation. Furthermore, the law is very prescriptive and the proposed rule is a nearly verbatim implementation of the statutory language, so there could be no substantive change to this rule without a corresponding statutory change to 10 U.S.C. 2321. The statute was effective upon implementation, and is expected to be beneficial to industry, including small businesses.

II. Discussion and Analysis

In order to implement the statutory changes for validation of asserted restrictions on technical data, and apply the revised requirements and procedures to validation of asserted restrictions on computer software, this final rule amends—

- DFARS 227.7103–13, Government right to review, verify, challenge, and validate asserted restrictions;
- DFARS 227.7203–13, Government right to review, verify, challenge, and validate asserted restrictions;
- DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software; and
- DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data.

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

This final rule does not add any new provisions or clauses or add new requirements to existing provision or clauses. Rather, when acquiring major weapon systems, it expands the circumstances relating to commerciality in which the contracting officer shall presume that development was exclusively at private expense.

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. Regulatory Flexibility Act

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

This rule was initiated to implement section 813(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). The objective of this rule is to reduce the requirement to respond to Government