■ a. In paragraph (2)(i)(A), removing ''Milestone Decision Authority'' and adding ''milestone decision authority'' in its place;
■ b. In paragraph (2)(i)(C) introductory text, removing ''Milestone Decision Authority's'' and adding ''milestone decision authority's'' in its place;
■ c. Revising paragraphs (2)(ii) introductory text and (2)(ii)(A) introductory text;
■ d. In paragraph (2)(ii)(A)(*2*), removing the word ''when''; and
■ e. Adding paragraphs (2)(iii) and (2)(iv).

The revision and addition read as follows:

234.004 Acquisition strategy.

* * * * *

(2) * * *

(ii) In accordance with section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), the contracting officer shall—

(A) Not use cost-reimbursement line items for the acquisition of production of major defense acquisition programs, unless the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), or the milestone decision authority when the milestone decision authority is the service acquisition executive of the military department that is managing the program, submits to the congressional defense committees—

* * * * *

(iii) See 216.301–3 for additional contract type approval requirements for cost-reimbursement contracts.

(iv) For fixed-price incentive (firm target) contracts, contracting officers shall comply with the guidance provided at PGI 216.403–1(1)(ii)(B) and (C).

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

■ 11. Amend section 235.006 by—
■ a. Redesignating paragraphs (b)(i) and (ii) as paragraphs (b)(ii) and (iii);
■ b. In newly redesignated paragraph (b)(ii)(B) introductory text, removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L))'' and adding ''milestone decision authority'' in its place;
■ c. In newly redesignated paragraph (b)(iii)(A)(*3*) introductory text, removing ''(b)(ii)(A)(*1*)'' and adding ''(b)(iii)(A)(*1*)'' in its place;
■ d. In newly redesignated paragraph (b)(iii)(A)(*3*)(*i*), removing ''USD(AT&L)'' and adding ''USD(A&S)'' in its place;
■ e. In newly redesignated paragraph (b)(iii)(A)(*3*)(*ii*), removing ''(b)(ii)(A)(*3*)(*i*)'' and adding ''(b)(iii)(A)(*3*)(*i*)'' in its place;
■ f. In the newly redesignated paragraph (b)(iii)(B) introductory text, removing ''USD(AT&L)'' and adding ''USD(A&S)'' in two places; and
■ g. Adding new paragraph (b)(i).

The addition reads as follows:

235.006 Contracting methods and contract type.

(b)(i) Consistent with section 829 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328), the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) has determined that the use of cost-reimbursement contracts for research and development in excess of $25 million is approved, if the contracting officer executes a written determination and findings that—

(A) The level of program risk does not permit realistic pricing; and

(B) It is not possible to provide an equitable and sensible allocation of program risk between the Government and the contractor.

* * * * *

[FR Doc. 2019–25658 Filed 11–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215 and 252

[Docket DARS–2019–0038]

RIN 0750–AJ78

Defense Federal Acquisition Regulation Supplement: Management of Should-Cost Review Process (DFARS Case 2018–D015)

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 2018, which requires an amendment to the DFARS to provide for the appropriate use of the should-cost review process of a major weapon system.

DATES: Effective November 27, 2019.

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 84 FR 39254 on August 9, 2019, to implement section 837 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 837 requires an amendment to the DFARS to provide for the appropriate use of the should-cost review process of a major weapon system in a manner that is transparent, objective, and provides for the efficiency of the systems acquisition process in the Department of Defense. There were no public comments submitted in response to the proposed rule. There are no changes from the proposed rule made in the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule create a new clause at DFARS 252.215–7015, Program Should-Cost Review, but this clause is not applicable to contracts valued at or below the simplified acquisition threshold or for the acquisition of commercial items, including commercially available off-the-shelf items. Contracts for the development and or production of a major weapon system do not include contracts valued at or below the simplified acquisition threshold and are unlikely to include contracts for commercial items.

III. Executive Orders 12866 and 13563

Executive Order (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 and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

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 action is necessary to implement section 837 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018. Section 837 requires an amendment to the DFARS to provide for the appropriate use of the should-cost review process of a major weapon system in a manner that is transparent, objective and provides for the efficiency of the systems acquisition process in the Department of Defense.

The objective of this rule is to amend the DFARS to include six elements, at a minimum, regarding the appropriate use of the should-cost review of a major weapon system: (1) A description of the features of the should-cost review process, (2) establishment of a process for communicating with the prime contractor on the program the elements of a proposed should-cost review, (3) a method for ensuring that identified should-cost savings opportunities are based on accurate, complete, and current information and can be quantified and tracked, (4) a description of the training, skills, and experience that Department of Defense and contractor officials carrying out a should-cost review should possess, (5) a method for ensuring appropriate collaboration with the contractor throughout the review process, and (6) establishment of review process requirements that provide for sufficient analysis and minimize any impact on program schedule. The legal basis for these changes is section 837 of the NDAA for FY 2018.

No public comments were received in response to the proposed rule.

This rule only applies to contracts for the development and or production of a major systems, as defined in FAR 2.101. DoD estimates that there are 150 major systems, which include major weapon systems. DoD estimates that the prime contractors for major systems are other than small business and only one program should-cost review occurs per year for major systems, so this rule will have minimal impact on small businesses.

This final rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

There are no known significant alternative approaches to the rule that would meet the objectives. There is no significant economic impact on small entities.

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 215 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 215 and 252 continues to read as follows:

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

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Amend section 215.407–4 by designating the text as paragraph (a), adding a heading to newly designated paragraph (a), and adding paragraph (b) to read as follows:

215.407–4 Should-cost review.

(a) *General.* * * *

(b) *Program should-cost review.* Major weapon system should-cost program reviews shall be conducted in a manner that is transparent, objective, and provides for the efficiency of the DoD systems acquisition process (section 837 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91)).

(i) Major weapon system should-cost reviews may include the following features:

(A) A thorough review of each contributing element of the program cost and the justification for each cost.

(B) An analysis of non-value added overhead and unnecessary reporting requirements.

(C) Benchmarking against similar DoD programs, similar commercial programs (where appropriate), and other programs by the same contractor at the same facility.

(D) An analysis of supply chain management to encourage competition and incentive cost performance at lower tiers.

(E) A review of how to restructure the program (Government and contractor) team in a streamlined manner, if necessary.

(F) Identification of opportunities to break out Government-furnished equipment versus prime contractor-furnished materials.

(G) Identification of items or services contracted through third parties that result in unnecessary pass-through costs.

(H) Evaluation of ability to use integrated developmental and operational testing and modeling and simulation to reduce overall costs.

(I) Identification of alternative technology and materials to reduce developmental or lifecycle costs for a program.

(J) Identification and prioritization of cost savings opportunities.

(K) Establishment of measurable targets and ongoing tracking systems.

(ii) The should-cost review shall provide for sufficient analysis while minimizing the impact on program schedule by engaging stakeholders early, relying on information already available before requesting additional data, and establishing a team with the relevant expertise early.

(iii) The should-cost review team shall be comprised of members, including third-party experts if necessary, with the training, skills, and experience in analysis of cost elements, production or sustainment processes, and technologies relevant to the program under review. The review team may include members from the Defense Contract Management Agency, the department or agency's cost analysis center, and appropriate functional organizations, as necessary.

(iv) The should-cost review team shall establish a process for communicating and collaborating with the contractor throughout the should-cost review, including notification to the contractor regarding which elements of the contractor's operations will be reviewed and what information will be necessary to perform the review, as soon as practicable, both prior to and during the review.

(v) The should-cost review team report shall ensure, to the maximum extent practicable, review of current, accurate, and complete data, and shall identify cost savings opportunities associated with specific engineering or business changes that can be quantified and tracked.

■ 3. Amend section 215.408 by adding paragraph (8) to read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(8) Use the clause at 252.215–7015, Program Should-Cost Review, in all solicitations and contracts for the development or production of a major weapon system, as defined in 234.7001.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 252.215–7015 to read as follows:

252.215–7015 Program Should-Cost Review.

As prescribed in 215.408(8), use the following clause:

Program Should-Cost Review (Nov 2019)

(a) The Government has the right to perform a program should-cost review, as described in Federal Acquisition Regulation (FAR) 15.407–4(b). The review may be conducted in support of a particular contract proposal or during contract performance to find opportunities to reduce program costs. The Government will communicate the elements of the proposed should-cost review to the prime contractor (Pub. L. 115–91).

(b) If the Government performs a program should-cost review, upon the Government's request, the Contractor shall provide access to accurate and complete cost data and Contractor facilities and personnel necessary to permit the Government to perform the program should-cost review.

(c) The Government has the right to use third-party experts to supplement the program should-cost review team. The Contractor shall provide access to the Contractor's facilities and information necessary to support the program should-cost review to any third-party experts who have signed non-disclosure agreements in accordance with the FAR 52.203–16.

(End of clause)

[FR Doc. 2019–25655 Filed 11–26–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 237

[Docket DARS–2019–0066]

RIN 0750–AK86

Defense Federal Acquisition Regulation Supplement: Repeal of Temporary Statutory Authorities (DFARS Case 2019–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 2019.

DATES: Effective November 27, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to partially implement section 812 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 812 repealed more than 60 obsolete Defense acquisition laws, most of which have been completed, have expired, or do not impact the contracting regulations. DoD published a final rule to repeal one statute identified in section 812 at 84 FR 12137 on April 1, 2019. This rule repeals two additional statutes, section 842(b) of the NDAA for FY 2007 (Pub. L. 109–364) and section 1010 of the USA Patriot Act of 2001 (Pub. L. 107–56).

To implement section 842(b) of the NDAA for FY 2007, DoD published a final rule at 74 FR 37626 on July 29, 2009 (DFARS Case 2008–D003). The rule established a one-time waiver authority for contracts under which specialty metals were incorporated into items produced, manufactured, or assembled in the United States prior to October 17, 2006, and where final acceptance by the Government took place after that date, but before September 30, 2010.

To implement section 1010 of the USA Patriot Act of 2001, DoD published a final rule at 67 FR 55730 on August 30, 2002 (DFARS Case 2001–D018). The rule provided an exception to the prohibition on contracting for security functions at a military installation or facility. The exception authorized DoD to award contracts to proximately located local and State governments during the period of time that United States armed forces were engaged in Operation Enduring Freedom and 180 days thereafter. Operation Enduring Freedom officially ended on December 29, 2014; therefore, this authority expired on June 26, 2015.

II. Discussion and Analysis

This rule removes the obsolete language at DFARS 225.7003–4 and 237.102–70(c) that implemented sections 842(b) and 1010, respectively.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the rule merely removes two expired authorities from the DFARS.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule removes expired authorities for contracted security functions at a military installation or facility at DFARS 237.102–70(c) and a one-time waiver of the specialty metals clause under certain circumstances at DFARS 225.7003–4. This rule does not create or revise any solicitation provisions or contract clauses.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and E.O. 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.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.