

Year 2020 that removes the qualification requirement for contracting professionals to have completed 24 semester credit hours (or equivalent) of study in specific areas.

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Kerryn Loan, telephone 571-372-6119.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 116-92). Section 861 amends section 808 of the NDAA for FY 2000 (Pub. L. 106-398) by removing the requirement for contracting professionals to have completed at least 24 semester credit hours (or equivalent) of study from an accredited institution of higher education in the areas of accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization, and management. The qualification requirement, implemented at Defense Federal Acquisition Regulations Supplement (DFARS) 201.603-2(1)(iii)(B) and 218.201(1), is removed by this final rule in accordance with section 861. The title to DoD Instruction 5000.66 is also updated to read "Defense Acquisition Workforce Education, Training, Experience, and Career Development Program" at DFARS 201.603-2(2)(iii).

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

This rule only impacts the internal operating procedures of DoD. As such, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

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 (FAR) 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 it only impacts processes that are internal to DoD.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, 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. The Office of Management and Budget, Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

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

VI. 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 requirements 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.

VII. 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 201 and 218

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201 and 218 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201 and 218 continues to read as follows:

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

PART 201—FEDERAL ACQUISITION REGULATION SYSTEM

■ 2. Amend section 201.603-2 by revising paragraphs (1)(iii) and (2)(iii) to read as follows:

201.603-2 Selection.

- (1) * * *
- (iii) Have received a baccalaureate degree from an accredited educational institution; and
- * * * * *
- (2) * * *
- (iii) Is an individual appointed to a 3-year developmental position. Information on developmental opportunities is contained in DoD Instruction 5000.66, Defense Acquisition Workforce Education, Training, Experience, and Career Development Program.
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PART 218—EMERGENCY ACQUISITIONS

218.201 [Amended]

■ 3. Amend section 218.201 in paragraph (1) by removing "and 24 semester credit hours of business related courses".

[FR Doc. 2020-11751 Filed 6-4-20; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206 and 219

[Docket DARS-2020-0016]

RIN 0750-AK93

Defense Federal Acquisition Regulation Supplement: Justification and Approval Threshold for 8(a) Contracts (DFARS Case 2020-D006)

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 2020.

DATES: Effective June 5, 2020.

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 823 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92). Section 823 increases the threshold for requiring a justification and approval to award a sole source contract to a participant in the 8(a) program to actions exceeding \$100 million. The current threshold is \$22 million. Section 823 also designates the head of the procuring activity as the approval authority. To implement section 823, the revised threshold is added in a new DFARS section 206.303-1, Requirements, and the new approval authority is added in DFARS 206.304, Approval of the justification. Corresponding revisions to indicate the new threshold are also included at DFARS 206.303-2, Content, and 219.808-1, Sole source.

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

This rule does not create or revise any solicitation provisions or contract clauses. This rule amends DFARS 206.303 to increase the threshold for requiring a sole source justification and approval for contracts to 8(a) program participants exceeding \$100 million. The rule also designates the appropriate approval authority.

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 (FAR) 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 it affects DoD internal operating procedures pertaining to sole source justifications for 8(a) procurements and the designated approval authority. The increased threshold and assignment of approval authority does not have a significant effect beyond the internal operating procedures of the agency issuing the policy. There is no additional cost or administrative impact on contractors or offerors.

IV. 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.

V. 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.

VI. 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.

VII. 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 206 and 219

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 206 and 219 are amended as follows:

■ 1. The authority citation for 48 CFR parts 206 and 219 continues to read as follows:

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

PART 206—COMPETITION REQUIREMENTS

■ 2. Add section 206.303-1 to read as follows:

206.303-1 Requirements.

(a) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), no justification and approval is required for a sole-source contract under the 8(a) authority (15 U.S.C. 637(a)) for an amount not exceeding \$100 million.

(b) In lieu of FAR 6.303-1(b), in accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracting officers shall not award a sole source contract under the 8(a) authority (15 U.S.C. 637(a)) for an amount exceeding \$100 million unless—

(1) The contracting officer justifies the use of a sole source contract in writing in accordance with FAR 6.303-2;

(2) The justification is approved in accordance with 206.304(a)(S-71); and

(3) The justification and related information are made public after award in accordance with FAR 6.305.

3. Amend section 206.303-2 by redesignating paragraph (b)(i) as (b)(ii) and adding a new paragraph (b)(i) and paragraph (d) to read as follows:

206.303-2 Content.

(b)(i) In lieu of the threshold at FAR 6.303-2(b), each justification shall include the information at FAR 6.303-2(b), except for sole-source 8(a) contracts over \$100 million (see paragraph (d) of this section).

* * * * *

(d) In lieu of the threshold at FAR 6.303-2(d), each justification for a sole-source 8(a) contract over \$100 million shall include the information at FAR 6.303-2(d).

■ 4. Amend section 206.304 by adding paragraph (a)(S-71) to read as follows:

206.304 Approval of the justification.

(a) * * *

(S-71) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), the head of the procuring activity is the approval authority for a proposed sole-source 8(a) contract exceeding \$100 million. This authority may only be delegated to an officer or employee who—

(1) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

PART 219—SMALL BUSINESS PROGRAMS

■ 5. Amend section 219.808-1 by adding paragraph (a) to read as follows:

219.808-1 Sole source.

* * * * *

(a) In lieu of the threshold at FAR 19.808-1(a), the SBA may not accept for negotiation a DoD sole-source 8(a) contract exceeding \$100 million unless DoD has completed a justification in accordance with FAR 6.303 and 206.303-1(b).

[FR Doc. 2020-11750 Filed 6-4-20; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 208

[Docket DARS-2020-0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

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

ACTION: Final rule.

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

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(A&S)DPC(DARS), Room 3B941, 20360 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6115; facsimile 571-372-6094.

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

Section 208.002 heading is corrected to align with the Federal Acquisition Regulation naming convention for this section and to add new paragraphs (a)(1) introductory text and (a)(1)(i) to provide a notice to contracting officers to see DFARS Procedures, Guidance, and Information 208.002(a)(1)(i) to obtain information on available items in DoD's property inventories. In paragraph (a)(1)(v), two references to "Subpart" are changed to "subpart".

List of Subjects in 48 CFR Part 208

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 208 is amended as follows:

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 208 continues to read as follows:

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

■ 2. Revise section 208.002 to read as follows:

208.002 Priorities for use of mandatory Government sources.

(a)(1) *Supplies.* (i) See the guidance at PGI 208.002(a)(1)(i) to obtain information on available items in DoD's property inventories.

(v) See subpart 208.70, Coordinated Acquisition, and subpart 208.74, Enterprise Software Agreements.

[FR Doc. 2020-11752 Filed 6-4-20; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 210, 212, 215, and 234

[Docket DARS-2019-0050]

RIN 0750-AK65

Defense Federal Acquisition Regulation Supplement: Market Research and Consideration of Value for the Determination of Price (DFARS Case 2019-D027)

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 several sections

of the National Defense Authorization Act for Fiscal Year 2017 to address how contracting officers may require the offeror to submit relevant information to support market research for price analysis, and allow an offeror to submit information relating to the value of a commercial item to aid in the determination of the reasonableness of the price of such item.

DATES: Effective June 5, 2020.

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 84 FR 50812 on September 26, 2019, to implement sections 871 and 872 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). Section 871 modifies 10 U.S.C. 2377, Preference for acquisition of commercial items, to state that, to the extent necessary to support market research for determination of the reasonableness of the price of commercial items, the contracting officer shall use the information submitted under 10 U.S.C. 2379(d) in the case of major weapon systems acquired as commercial items; and in the case of other items, the contracting officer may require the offeror to submit relevant information. Section 872 modifies 10 U.S.C. 2379, Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items, to allow an offeror to submit information or analysis relating to the value of a commercial item. One respondent 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 are provided as follows:

A. Summary of Significant Changes

The final rule removes the discussion of value analysis at DFARS 234.7002(d)(5) and the associated definition of "value analysis" at DFARS 234.7001 from the proposed rule.

B. Analysis of Public Comments

Comment: The respondent supports the proposed rule, with a few exceptions. The respondent stated that in the proposed definition of "value analysis" at DFARS 234.7001, "cost"