

Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. 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 is required to implement section 855 of the National Defense Authorization Act (NDAA) for Fiscal Year 2022 (Pub. L. 117–81, 10 U.S.C. 4651 note prec.). The objective of the rule is to implement section 855 of the NDAA for FY 2022 to require offerors, when submitting a proposal for a covered contract, to disclose their use of workforce and facilities in the People's Republic of China if they employ one or more individuals who will perform work in the People's Republic of China, unless a national security waiver has been granted. A national security waiver may be granted if a determination is made that such disclosure would not be in the interest of national security. Recurring disclosures are required following contract award for contractors that are covered entities for fiscal years 2023 and 2024. The initial and recurring disclosures must include the total number of individuals who will perform work in the People's Republic of China on the covered contracts and a description of the physical presence of the facility, including the street address, where work on the covered contract will be performed.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

Federal Procurement Data System (FPDS) data was analyzed for fiscal years 2019, 2020, and 2021, purchases of supplies or end products and services for which the place of manufacture, place of performance, or country of the product's origin is China; with a value above \$5 million; and excluding commercial services, commercial products, and commercially available off-the-shelf (COTS) items. The FPDS data revealed no awards that met these criteria.

In addition, a data analysis was performed on the North Atlantic Treaty Organization (NATO) Commercial and Government Entity (NCAGE) codes from the NATO Support and Procurement Agency (NSPA) for entities located in the People's Republic of China, including Hong Kong. This review revealed a total of 5,143 entities. There were 4,706 entities in the People's Republic of China with NCAGE codes, and 437 entities in Hong Kong with

NCAGE codes. This list of NCAGE codes was compared to any People's Republic of China or Hong Kong NCAGE codes from the FPDS data results for a list of contract awards in fiscal years 2019, 2020 and 2021. Similarly, there were no contract awards to any unique entities or small business entities meeting the criteria.

There are projected reporting or recordkeeping requirements, and there may be costs to ensure compliance. The contractor's postaward disclosure is required for fiscal years 2023 and 2024, to disclose if a contractor that is a covered entity employs one or more individuals who perform work in the People's Republic of China on a covered contract. The disclosure must include the total number of individuals who will perform work in the People's Republic of China on the contract and a description of the exact street location of the physical presence in China where the work on the contract will be performed.

There are no known alternate approaches to the rule that would meet the objectives of the statute.

VII. Paperwork Reduction Act

This rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0750–0005, entitled Defense Federal Acquisition Regulation Supplement (DFARS), Disclosure of Employment of Individuals Who Work in the People's Republic of China.

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

■ Accordingly, the interim rule implementing 48 CFR parts 212, 225, and 252, which was published at 87 FR 52339 on August 25, 2022, is adopted as final without change.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 232, and 252

[Docket DARS–2023–0004]

RIN 0750–AL27

Defense Federal Acquisition Regulation Supplement: Prompt Payment of Contractors (DFARS Case 2021–D008)

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 remove a clause and the associated prescription that are no longer necessary.

DATES: Effective March 16, 2023.

FOR FURTHER INFORMATION CONTACT: David E. Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements section 815 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283), which strengthened the requirement that DoD establish a goal to pay small business contractors within 15 days of receipt of an invoice. In particular, section 815(1) of the NDAA for FY 2021 amended 10 U.S.C. 2307(a)(2)(A) (now located in 10 U.S.C. 3801) by striking the language “if a specific payment date is not established by contract.” Section 815(2) of the NDAA for FY 2021 amended 10 U.S.C. 2307(a)(2)(B) by striking the language “if the prime contractor agrees” and replacing it with the language “if the prime contractor agrees or proposes.” Section 814 of the NDAA for FY 2022 (Pub. L. 117–81) rescinded section 815(2) of the NDAA for FY 2021.

In related Federal Acquisition Regulation (FAR) Case 2020–007, DoD, GSA, and NASA published a proposed rule at 86 FR 53923 on September 29, 2021, to implement a policy that provides for accelerated payments to contractors that are small businesses and to small business subcontractors by accelerating payments to their prime contractors. This change to the FAR implements section 873 of the NDAA for FY 2020 (Pub. L. 116–92). Section 873 requires agencies to establish an accelerated payment date for small business prime contractors, to the fullest

extent permitted by law, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. Section 873 also requires that, to the fullest extent permitted by law, the head of an agency establish an accelerated payment date for prime contractors that subcontract with small businesses, with a goal of 15 days after receipt of a proper invoice, if—

(1) A specific payment date is not established by contract; and

(2) The contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor.

FAR Case 2020–007 implements portions of 10 U.S.C. 2307 (now located in 10 U.S.C. 3801–3808) stating requirements regarding accelerated payments applicable only to DoD. The FAR case implements section 815(1) of the NDAA for FY 2021 by excluding from DoD contracts the condition reflected in the language “a specific payment date is not established by contract.” Therefore, separate implementation of section 815(1) in the DFARS is not required.

DFARS Case 2021–D008 now rescinds portions of the DFARS that FAR Case 2020–007 renders moot. In particular, DFARS clause 252.232–7017, Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration, prohibits the contractor requiring any further consideration from or charging fees to the small business subcontractor in exchange for making accelerated payments. DFARS 232.009–2 prescribes inclusion of the clause at DFARS 252.232–7017 in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, that include the clause at FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors. FAR Case 2020–007 amends FAR clause 52.232–40 to include the same information as DFARS clause 252.232–7017, so the DFARS clause is duplicative and no longer necessary. Therefore, it can be removed from the DFARS along with the prescription at 232.009–2.

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

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute 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 this rule merely removes an obsolete clause and the associated prescription from the DFARS.

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

This rule only removes obsolete DFARS clause 252.232–7017, Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration, and the associated prescription. This rule does not create any new solicitation provisions or contract clauses that apply to contracts at or below the simplified acquisition threshold, for commercial products, including commercially available off-the-shelf items, or for commercial services.

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.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published

in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. 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 Parts 212, 232, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 232, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 232, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.301 [Amended]

■ 2. Amend section 212.301 by removing paragraph (f)(xiv)(G).

PART 232—CONTRACT FINANCING

■ 3. Revise sections 232.009 and 232.009–1 to read as follows:

232.009 Providing accelerated payments to small business contractors and to prime contractors that subcontract with a small business concern.

232.009–1 General.

10 U.S.C. 3801(b) requires DoD to provide accelerated payments to small business contractors and subcontractors, to the fullest extent permitted by law, with a goal of 15 days.

232.009–2 [Removed]

■ 4. Remove section 232.009–2.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232–7017 [Removed and Reserved]

■ 5. Remove and reserve section 252.232–7017.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 242

[Docket DARS–2022–0025]

RIN 0750–AL20

Defense Federal Acquisition Regulation Supplement: Quick-Closeout Procedures Threshold (DFARS Case 2021–D001)

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 recommendation from the Government Accountability Office regarding quick-closeout procedures.

DATES: Effective March 1, 2023.

FOR FURTHER INFORMATION CONTACT: David E. Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 87 FR 65505 on October 28, 2022, to amend the DFARS to update the quick-closeout procedures and expand contracts eligible for quick-closeout. There were no public comments submitted in response to the proposed rule. There are no changes made to the final rule.

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

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses.

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 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.

IV. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the *Federal Register*. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 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 revises the DFARS to implement changes to the indirect cost rate quick-closeout procedures. Government Accountability Office Report 17–738, Federal Contracting: Additional Management Attention and Action Needed to Close Contracts and Reduce Audit Backlog, published September 2017 recommended that DoD develop a means for Department-wide oversight into both components' progress in meeting goals on closing contracts and the status of contracts eligible for closeout. The Advisory Panel on Streamlining and Codifying Acquisition Regulations (Section 809 Panel) was established pursuant to section 809 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92) to deliver recommendations that could transform the defense acquisition system to meet the threats and demands of the 21st century. Additionally, the Section 809

Panel recommended authorizing the settlement of final overhead rates when it is in the best interest of the Government and closing complete contracts regardless of dollar value or the percentage of unsettled direct and indirect costs allocable to the contracts (recommendation 58).

This rule states that the amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order will be considered relatively insignificant when the total unsettled direct costs or indirect costs to be allocated do not exceed \$2 million. Additionally, DCMA administrative contracting officers may negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed in advance of the determination of final direct costs and indirect rates set forth in FAR 42.705 regardless of the dollar value or percentage of unsettled direct or indirect costs allocable to the contract.

There were no public comments submitted in response to the proposed rule.

This rule will likely affect small entities that have been or will be awarded contracts, task orders, and delivery orders valued over \$2 million. Data was obtained from the Procurement Business Intelligence Service (PBIS) for contracts that were awarded in fiscal years 2019 through 2021 and eligible for quick-closeout procedures, were valued at more than \$2 million, and contained one of the following FAR clauses:

- 52.216–7, Allowable Cost and Payment (including Alternates I, II, IV);
- 52.216–17, Incentive Price Revision—Successive Targets (including Alternate I);
- 52.242–3, Penalties for Unallowable Costs; and
- 52.242–4, Certification of Final Indirect Costs.

Data from PBIS revealed DoD awarded contracts to an average of 832 small businesses per year in fiscal years 2019 through 2021. Therefore, this rule may apply to approximately 832 unique small entities.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

DoD did not identify any significant alternatives that would minimize or reduce the significant economic impact on small entities because this rule is not expected to have a significant impact on small entities.

VI. Paperwork Reduction Act

This rule does not contain any information collection requirements that