

VII. Paperwork Reduction Act

This 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 202

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, *Defense Acquisition Regulations System*.

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 202 as follows:

- 1. The authority citation for 48 CFR part 202 continues to read as follows:

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

PART 202—DEFINITIONS OF WORDS AND TERMS

- 2. Amend section 202.101 by revising the definition of “Departments and agencies” to read as follows:

202.101 Definitions.

* * * * *

Departments and agencies, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine Corps is a part of the Department of the Navy, and the Space Force is a part of the Air Force). The defense agencies are the Chief Digital and Artificial Intelligence Office, the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Contract Management Agency, the Defense Counterintelligence and Security Agency, the Defense Finance and Accounting Service, the Defense Health Agency, the Defense Information Systems Agency, the Defense Intelligence Agency, the Defense Logistics Agency, the Defense Threat Reduction Agency, the Missile Defense Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Strategic Capabilities Office, the United States Cyber Command, the United States Special Operations Command, the United States Transportation Command, and the Washington Headquarters Service.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 204, 205, 212, 215, and 225

[Docket DARS–2023–0043]

RIN 0750–AK33

Defense Federal Acquisition Regulation Supplement: Inapplicability of Additional Defense-Unique Laws and Certain Non-Statutory DFARS Clauses to Commercial Item Contracts (DFARS Case 2018–D074)

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 sections of the National Defense Authorization Acts for Fiscal Years 2018 and 2019 regarding the applicability of certain solicitation provisions and contract clauses to contracts and subcontracts for commercial products, commercial services, and commercially available off-the-shelf items.

DATES: Effective November 25, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, telephone 703–508–7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 88 FR 80468 on November 17, 2023, to amend the DFARS to implement paragraphs (b) and (c) of section 849 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91) and section 837 of the NDAA for FY 2019 (Pub. L. 115–232). Paragraph (b) of section 849 requires that DoD review the DFARS and propose revisions to eliminate certain contract clause requirements applicable to Federal Acquisition Regulation (FAR) part 12 commercial product and commercial service acquisitions, except for regulations required by law or Executive order, unless the Secretary of Defense determines that there is a specific reason not to eliminate the regulation. Paragraph (c) of section 849 requires that DoD review the DFARS and propose revisions to eliminate certain contract clause requirements applicable to commercially available off-the-shelf (COTS) item subcontracts, except for regulations required by law or Executive

order, unless the Secretary of Defense determines that there is a specific reason not to eliminate the regulation.

Paragraph (a) of section 837 of the NDAA for FY 2019 revises 10 U.S.C. 2375(b)(2), redesignated as 10 U.S.C. 3452(b)(2), by deleting the date “January 1, 2015” and adding the date “October 13, 1994” (the date of the Federal Acquisition Streamlining Act (FASA) of 1994). DoD published an extension to the comment period in the **Federal Register** on December 27, 2023, at 88 FR 89357. Two 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; however, no changes were made to the rule as a result of the comments received. A discussion of the comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

DFARS 212.371 is amended to add the contract clauses at DFARS 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, and 252.205–7000, Provision of Information to Cooperative Agreement Holders, to the list of solicitation provisions and contract clauses that are inapplicable to contracts for the acquisition of COTS items. These clauses are not applicable to contracts solely for the acquisition of COTS items. DFARS 212.301 is amended to restore, to the list of provisions and clauses that apply to commercial products and commercial services, the clause at DFARS 252.203–7005, Representation Relating to Compensation of Former DoD Officials, that was removed from the list in the proposed rule. This change aligns this final rule with the final rule for DFARS Case 2010–D020 published in the **Federal Register** on November 18, 2011 (76 FR 71826).

B. Analysis of Public Comments

Comment: One respondent recommended that DFARS clause 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, be removed from the DFARS as it is obsolete, since the United States is no longer involved in Afghanistan and is no longer purchasing uniform components for the Afghan military or the Afghan National Police.

Response: DoD acknowledges the respondent’s concern relating to the applicability of DFARS clause 252.225–7029; however, the clause cannot be removed from the DFARS until the

underlying statutory requirement is repealed.

Comment: One respondent indicated that the proposed rule did not sufficiently address the extent to which DoD reviewed, on a case-by-case basis, the applicability of all regulations that require specific contract clauses for contracts using the procedures in part 12 of the FAR and for subcontracts for COTS items. The respondent requested that DoD publish a second proposed rule that explains and describes the case-by-case determinations that DoD made with respect to each of these regulations.

Response: Section II of the preamble of the proposed rule provided a description of the analysis performed. In addition, the proposed rule for DFARS Case 2017–D010 (83 FR 30646) provided a description of the analysis performed of commercial product and commercial service applicability for DoD-unique statutes and associated contract clauses issued on or after January 1, 2015. In reviewing the remaining provisions and clauses, DoD considered procurement-related reasons including, but not limited to, the following: national security, common commercial practice, domestic preference, prohibited sources, trade agreements, protection of the Government, health and safety, and foreign military sales requirements.

C. Other Changes

A conforming change is made to the prescription at 205.470 for the clause at DFARS 252.205–7000. Language at 203.171–4(b) regarding applicability to commercial products and commercial services, which was proposed for deletion, has been restored in the prescription for the provision at DFARS 252.203–7005. DFARS 212.205, Offers, is removed to align with changes made at DFARS 215.371–4(a)(7). DFARS 212.371 is amended to change the date “October 14, 1994”, to “October 13, 1994” to align with 10 U.S.C. 3452. The prescription at DFARS 225.1103(4) for the clause at 252.225–7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, is amended to add the requirement to include the clause in solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, to align with the determination made in the final rule for DFARS Case 2018–D020 published on December 21, 2018, at 83 FR 66066.

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

This final rule does not create any new solicitation provisions or contract clauses. However, the final rule clarifies the applicability of the following provisions and clause by amending the list under paragraph (f) at DFARS 212.301, Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services, to remove DFARS clause 252.203–7003, Agency Office of the Inspector General, and DFARS provision 252.215–7007, Notice of Intent to Resolicit. This rule also clarifies the applicability of certain provisions and clauses by amending the list at DFARS 212.370, Inapplicability of certain provisions and clauses to contracts and subcontracts for the acquisition of commercial products, commercial services, and COTS items, to add the following: (1) DFARS clause 252.203–7003, Agency Office of the Inspector General; and (3) DFARS provision 252.215–7007, Notice of Intent to Resolicit. In addition, this rule makes similar clarifications at DFARS 212.371, Inapplicability of certain provisions and clauses to contracts for the acquisition of COTS items, to add the following: (1) DFARS clause 252.205–7000, Provision of Information to Cooperative Agreement Holders; (2) DFARS provision 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls; (3) DFARS clause 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting; (4) DFARS provision 252.204–7019, Notice of NIST SP 800–171 DoD Assessment Requirements; (5) DFARS clause 252.204–7020, NIST SP 800–171 DoD Assessment Requirements; and (6) DFARS clause 252.204–7021, Cybersecurity Maturity Model Certification Requirements.

IV. Expected Impact of the Proposed Rule

This final rule could impact any large or small business that is awarded a commercial contract by DoD. This rule does not add any new solicitation provisions or contract clauses. Rather, there may be a reduction in burden on contractors by making one solicitation provision and one contract clause no longer applicable to solicitations and contracts for commercial products, commercial services, and COTS items, and by making two provisions and four

clauses no longer applicable to solicitations and contracts for COTS items.

V. 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, as amended.

VI. 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.

VII. 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 rule is necessary to implement sections of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 and the NDAA for FY 2019 regarding the applicability of certain solicitation provisions and contract clauses to contracts and subcontracts for commercial products, commercial services, and commercially available off-the-shelf (COTS) items.

The objective of this rule is to implement paragraphs (b) and (c) of section 849 of the NDAA for FY 2018 (Pub. L. 115–91). Section 849 paragraph (b) requires an amendment to the DFARS to eliminate certain contract clause requirements applicable to FAR part 12 commercial product and commercial service acquisitions, except for regulations required by law or Executive order, unless the Secretary of Defense determines that there is a

specific reason not to eliminate the regulation. Section 849 paragraph (c) requires an amendment to the DFARS to eliminate certain contract clause requirements applicable to COTS item subcontracts, except for regulations required by law or Executive order, unless the Secretary of Defense determines that there is a specific reason not to eliminate the regulation.

This rule also includes revisions to implement paragraph (a) of section 837 of the NDAA for FY 2019 (Pub. L. 115–232). Section 837 paragraph (a) revises 10 U.S.C. 2375(b)(2), redesignated as 10 U.S.C. 3452(b)(2), by deleting the date “January 1, 2015” and adding the date “October 13, 1994.” This rule implements the change at 10 U.S.C. 3452(b)(2) by amending the DFARS to eliminate solicitation provisions and contract clauses enacted after October 13, 1994, not including the provisions or clauses referred to in 10 U.S.C. 3452(e)(1), (e)(2), and (e)(3), from commercial product and commercial service solicitations and contracts, respectively, unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exclude them.

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

According to data from the Federal Procurement Data System for FY 2021 through FY 2023, DoD awarded approximately 31,022 contracts for commercial products, commercial services, or COTS items to an average of 13,335 unique small entities per year. Therefore, DoD estimates that the number of small entities to which this rule will apply is 13,335.

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

There are no known alternatives that would accomplish the stated objectives of the statutes.

VIII. Paperwork Reduction Act

This 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 Parts 203, 204, 205, 212, 215, and 225

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR parts 203, 204, 205, 212, 215, and 225 as follows:

■ 1. The authority citation for parts 203, 204, 205, 212, 215, and 225 continues to read as follows:

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

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Amend section 203.1004 by revising paragraph (a) to read as follows:

203.1004 Contract clauses.

(a) Use the clause at 252.203–7003, Agency Office of the Inspector General, in solicitations and contracts that include the FAR clause 52.203–13, Contractor Code of Business Ethics and Conduct.

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PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 3. Amend section 204.7403 by revising paragraph (b) to read as follows:

204.7403 Contract clauses.

* * * * *

(b) Use the clause at 252.204–7015, Notice of Authorized Disclosure of Information for Litigation Support, in solicitations and contracts that involve litigation support services, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

PART 205—PUBLICIZING CONTRACT ACTIONS

■ 4. Revise section 205.470 to read as follows:

205.470 Contract clause.

Use the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations and contracts solely for the acquisition of commercially available off-the-shelf items, that are expected to exceed \$1.5

million. This clause implements 10 U.S.C. 4957.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.205 [Removed]

■ 5. Remove section 212.205.

■ 6. Amend section 212.301—

■ a. In paragraph (f)(i)(B) by removing “section 847 of Pub. L. 110–181” and adding “section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181)” in its place;

■ b. By removing paragraph (f)(i)(D);

■ c. By redesignating paragraph (f)(i)(E) as (f)(i)(D);

■ d. By revising paragraphs (f)(ii)(B) through (D);

■ e. By removing paragraph (f)(vi)(C);

■ f. By redesignating paragraphs (f)(vi)(D), (E), and (F) as paragraphs (f)(vi)(C), (D) and (E), respectively;

■ g. By revising paragraph (f)(viii)(D);

■ h. By revising paragraphs (f)(x)(J) through (L), (U), and (Y);

■ i. In paragraph (f)(xi)(A) by removing “Pub. L.” and adding “Public Law” in its place;

■ j. By revising paragraph (f)(xi)(B);

■ k. In paragraph (f)(xii)(C) by removing “227.7102–4(c)” and adding “227.7102–4(c), to comply with 10 U.S.C. 3781–3786” in its place;

■ l. In paragraph (f)(xiv)(D) by removing “232.7102” and adding “232.7102, to comply with 26 U.S.C. 6331(h)” in its place; and

■ m. By revising paragraphs (f)(xv)(A) and (B), (f)(xx)(B), and (f)(xxi)(A) and (D).

The revisions read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(ii) * * *

(B) Use the provision at 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls, as prescribed in 204.7304(a), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 1632 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291).

(C) Use the clause at 252.204–7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, as prescribed in 204.7304(b), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 1632 of the National

Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291).

(D) Use the clause at 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, as prescribed in 204.7304(c), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 1632 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291).

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(viii) * * *

(D) Use the provision at 252.219–7012, Competition for Religious-Related Services, as prescribed in 219.270–3, to comply with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92).

* * * * *

(x) * * *

(J) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, as prescribed in 225.7009–5, to comply with section 8065 of Public Law 107–117 and the same restriction in subsequent DoD appropriations acts.

(K) Use the clause at 252.225–7017, Photovoltaic Devices, as prescribed in 225.7017–4(a), to comply with section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

(L) Use the provision at 252.225–7018, Photovoltaic Devices—Certificate, as prescribed in 225.7017–4(b), to comply with section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

* * * * *

(U) Use the clause at 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in 225.7703–4(d), to comply with section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).

* * * * *

(Y) Use the clause at 252.225–7039, Defense Contractors Performing Private Security Functions Outside the United States, as prescribed in 225.302–6, to comply with section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

* * * * *

(xi) * * *

(B) Use the provision at 252.226–7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities, as prescribed in 226.7203, to comply with section 853 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136).

* * * * *

(xv) * * *

(A) Use the clause at 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel, as prescribed in 237.173–5, to comply with section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84).

(B) Use the clause at 252.237–7019, Training for Contractor Personnel Interacting with Detainees, as prescribed in 237.171–4, to comply with section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

* * * * *

(xx) * * *

(B) Use the clause at 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, as prescribed in 246.270–4, to comply with section 807 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84).

* * * * *

(xxi) * * *

(A) Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in 247.207, to comply with section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

* * * * *

(D) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(c), to comply with section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364).

* * * * *

■ 7. Amend section 212.370 by adding paragraphs (b) and (c) to read as follows:

212.370 Inapplicability of certain provisions and clauses to contracts and subcontracts for the acquisition of commercial products, commercial services, and commercially available off-the-shelf items.

* * * * *

(b) 252.203–7003, Agency Office of the Inspector General.

(c) 252.215–7007, Notice of Intent to Resolicit.

■ 8. Amend section 212.371 by—

- a. Revising the introductory text;
- b. Redesignating paragraphs (b) through (d) as paragraphs (h) through (j), respectively; and
- c. Adding new paragraphs (b) through (g).

The revision and additions read as follows:

212.371 Inapplicability of certain provisions and clauses to contracts for the acquisition of commercially available off-the-shelf items.

Commercially available off-the-shelf (COTS) items are a subset of commercial products. Therefore, the provisions and clauses listed in 212.370 as not applicable to contracts or subcontracts for the acquisition of commercial products are also not applicable to contracts or subcontracts for the acquisition of COTS items. In addition, the following provisions and clauses published after October 13, 1994, not expressly authorized in law, are not applicable or are modified in their applicability to contracts for the acquisition of COTS items:

* * * * *

(b) 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls.

(c) 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting.

(d) 252.204–7019, Notice of NIST SP 800–171 DoD Assessment Requirements.

(e) 252.204–7020, NIST SP 800–171 DoD Assessment Requirements.

(f) 252.204–7021, Cybersecurity Maturity Model Certification Requirements.

(g) 252.205–7000, Provision of Information to Cooperative Agreement Holders.

* * * * *

212.504 [Amended]

- 9. Amend section 212.504—
- a. By removing paragraph (a)(xiii);
- b. By redesignating paragraphs (a)(xiv) and (xv) as paragraphs (a)(xiii) and (xiv), respectively; and
- c. In the newly redesignated paragraph (a)(xiv) by removing “(section 8065 of Pub. L. 107–117)” and adding “(section 8065, Pub. L. 107–117)” in its place.

212.505 [Amended]

- 10. Amend section 212.505 in the second sentence of the introductory text by removing “or modified in their applicability” and adding “or are modified in their applicability” in its place.

PART 215—CONTRACTING BY NEGOTIATION

- 11. Amend section 215.371–4—
- a. In paragraph (a) introductory text by removing “section”; and
- b. By adding paragraph (a)(7).
The addition reads as follows:

215.371–4 Exceptions.

(a) * * *

(7) Acquisitions of commercial products and commercial services using FAR part 12 procedures.

* * * * *

■ 12. Revise section 215.371–6 to read as follows:

215.371–6 Solicitation provision.

Use the provision at 252.215–7007, Notice of Intent to Resolicit, in competitive solicitations that will be solicited for fewer than 30 days, unless an exception at 215.371–4 applies or the requirement is waived in accordance with 215.371–5.

PART 225—FOREIGN ACQUISITION

■ 13. Amend section 225.1103 by revising paragraph (4) to read as follows:

225.1103 Other provisions and clauses.

* * * * *

(4) Unless an exception in 225.770–3 applies, use the clause at 252.225–7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, involving the delivery of items covered by the United States Munitions List or the 600 series of the Commerce Control List.

[FR Doc. 2024–26054 Filed 11–14–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

[Docket DARS–2024–0035]

RIN 0750–AM13

Defense Federal Acquisition Regulation: Past Performance of Affiliate Companies of Small Business Concerns (DFARS Case 2024–D016)

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 2024 that provides direction to contracting officers evaluating the past performance of small business concerns.

DATES: Effective November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 703–901–3176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule amending the DFARS to implement section 865 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118–31). Section 865 requires DoD contracting officers to consider relevant past performance of affiliate companies of small business concerns during the evaluation of past performance in response to a competitive solicitation.

II. 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 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 there is no significant cost or administrative impact on contractors or offerors. When past performance will be evaluated in a source selection, contracting officers already request offerors to submit past performance information. This rule will allow offerors to provide past performance information for an affiliate company within that submission, and the Government would consider those submissions during the existing evaluation process.

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

This final rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts valued at or below the simplified acquisition threshold, for commercial products including COTS 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, as amended.

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 as defined by 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 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.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 215 as follows: