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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 212**

**RIN 0750-AI50**

**Defense Federal Acquisition Regulation Supplement: Deletion of Obsolete Text Relating to Acquisition of Commercial Items (DFARS Case 2015-D002)**

**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 delete obsolete text relating to acquisition of commercial items.

**DATES:** Effective [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Janetta Brewer, telephone 571-372-6104.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 12, 2012, the DFARS was amended to implement a recommendation made by the Panel on Contracting Integrity and included in its 2009 Report to Congress concerning compliance with the DFARS documentation requirements for commercial item

determinations. DFARS subpart 212.1 was revised to require the contracting officer to determine that an acquisition exceeding \$1 million and using FAR part 12 procedures either meets the commercial item definition at FAR 2.101 or the criteria at FAR 12.102(g)(1). The DFARS reference to FAR 12.102(g)(1), however, is no longer necessary since the FAR criteria only apply to contracts and task orders entered on or before November 24, 2013. Accordingly, DFARS 212.102(a)(i)(A) is being revised to remove the statement "or meets the criteria at FAR 12.102(g)(1)".

On November 1, 2004, DFARS subpart 212.70 was amended to implement section 847 of the National Defense Authorization Act for Fiscal Year 2004, which authorized DoD to carry out a pilot program that permitted the use of streamlined contracting procedures for the production of items or processes begun as prototype projects under other transaction agreements. Since the authority for this program expired on September 30, 2010, the associated text at DFARS subpart 212.70 is being removed.

**II. Publication of this final rule for public comment is not required by statute**

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (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 it only deletes from the DFARS obsolete authorities for a program that expired September 30, 2010, and removes an outdated reference to the FAR. As such, these DFARS updates have no significant effect beyond the internal operating procedures of the Government and do not impose a significant cost or administrative impact on contractors or offerors.

### **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. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. 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.

#### **V. 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 Part 212**

Government procurement.

**Manuel Quinones,**

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 212 is amended as follows:

#### **PART 212—ACQUISITION OF COMMERCIAL ITEMS**

1. The authority citation for 48 CFR part 212 continues to read as follows:

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

**212.102 [Amended]**

2. Amend section 212.102, paragraph (a)(i)(A) by removing the phrase "or meets the criteria at FAR 12.102(g)(1)".

**Subpart 212.70 [Removed and Reserved]**

3. Remove and reserve subpart 212.70 (consisting of sections 212.7000, 212.7001, 212.7002, 212.7002-1, 212.7002-2, 212.7002-3, and 212.7003).

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