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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 246, and 252

[Docket DARS-2016-0014]

RIN 0750-AI92

**Defense Federal Acquisition Regulation Supplement: Amendments
Related to Sources of Electronic Parts (DFARS Case 2016-D013)**

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 that makes contractors and subcontractors subject to approval (as well as review and audit) by appropriate DoD officials when identifying a contractor-approved supplier of electronic parts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2016-D013, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit

comments via the Federal eRulemaking portal by entering "DFARS Case 2016-D013" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2016-D013." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2016-D013" on your attached document.

- o Email: osd.dfars@mail.mil. Include DFARS Case 2016-D013 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 885(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114-92), which amends section 818(c)(3)(D)(iii) of the NDAA for FY 2012 (Pub. L. 112-81). Section 885(b) provides that contractors and subcontractors are subject to approval (as well as review and audit) by appropriate DoD officials when identifying a contractor-approved supplier of electronic parts.

II. Discussion and Analysis

This rule proposes to amend DFARS 212.301(f)(xix)(C), 246.870-0(a), and 252.246-7008(b) to cite to section 885(b) of the NDAA for FY 2016. In addition, the rule proposes to amend DFARS 246.870-2(a)(1)(ii)(C) and 252.246-7008(b)(2) to provide that contractor and subcontractor identification of contractor-approved suppliers of electronic parts is subject to review, audit, and approval by the contracting officer or a designee.

III. 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 add any new provisions or clauses to implement section 885(b) of the NDAA for FY 2016, which amends section 818 of the NDAA for FY 2012. It revises an existing clause 252.246-7008, which applies to acquisitions at or below the simplified acquisition threshold (SAT) and to contracts and

subcontracts for the acquisition of commercial items (including commercially available off-the-shelf (COTS) items). A determination and findings was signed under DFARS Case 2014-D005 on May 26, 2016, by the Director, Defense Procurement and Acquisition Policy, to justify the application of section 818 of the NDAA for FY 2012 to acquisitions at or below the SAT and to contracts and subcontracts for the acquisition of commercial items (including COTS items).

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

V. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule implements section 885(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114-92), which amended section 818 of the NDAA for FY 2012.

The objective of this proposed rule is to provide to DoD the authority to approve contractor-approved suppliers of electronic parts, in accordance with section 885(b) of the NDAA for FY 2016.

Based on data available in the Federal Procurement Data System for FY 2013 and 2014, DoD estimates that this rule will apply to approximately 65,357 small entities that have DoD prime contracts or subcontracts for: electronic parts; end items, components, parts, or assemblies containing electronic parts; or services, if the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

This proposed rule does not impose any reporting, recordkeeping, or other compliance requirements other than being subject to approval by DoD if the contractor or subcontractor identifies a contractor-approved supplier of electronic parts. However, the contractor may proceed with the acquisition of

electronic parts from a contractor-approved supplier unless otherwise notified by DoD.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD was unable to identify any significant alternatives that would reduce the economic impact on small entities and still fulfill the requirements of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2016-D013), in correspondence.

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 212, 246, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 246, and 252 are proposed to be amended as follows:

1. The authority citation for parts 212, 246, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

2. In section 212.301, amend paragraph (f)(xix)(C) by removing "(Pub. L. 113-291)" and adding "(Pub. L. 113-291) and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)" in its place.

PART 246—QUALITY ASSURANCE

246.870-0 [Amended]

3. Amend section 246.870-0, by removing "(Pub. L. 113-291)" and adding "(Pub. L. 113-291) and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)" in its place.

4. In section 246.870-2, revise paragraph (a)(1)(ii)(C) to read as follows:

246.870-2 Policy.

(a) * * *

(1) * * *

(ii) * * *

(C) The selection of such contractor-approved suppliers is subject to review, audit, and approval by the contracting officer. The contractor may proceed with the acquisition of electronic parts from a contractor-approved supplier unless otherwise notified by DoD.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 252.246-7008 by—

a. Removing the clause date "(AUG 2016)" and adding "(DATE)" in its place;

b. In paragraph (b) introductory text, by removing ""(Pub. L. 113-291)" and adding "(Pub. L. 113-291) and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)" in its place; and

c. Revising paragraph (b) (2) (iii).

The revision reads as follows:

252.246-7008 Sources of Electronic Parts.

* * * * *

(b) * * *

(2) * * *

(iii) The Contractor's selection of such contractor-approved suppliers is subject to review, audit, and approval by the Contracting Officer. The Contractor may proceed with the

acquisition of electronic parts from a contractor-approved
supplier unless otherwise notified by DoD.

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