



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216, 247, and 252

[Docket DARS-2018-0031]

RIN 0750-AJ91

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Requirements" (DFARS Case 2018-D030)

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 that is duplicative of an existing Federal Acquisition Regulation (FAR) clause.

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

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove the DFARS clause 252.216-7010, Requirements, the Alternate clause, the associated clause

prescription at DFARS 216.506, and a cross-reference to the clause at DFARS 247.271-3(p).

The DFARS clause is included in contracts for preparation of personal property for movement or storage, or for intra-city or intra-area movement; advises contractors that a requirements contract has been issued and how quantities work under the contract; that the delivery of items or performance of work is subject to the issuance of orders; and, that the Government shall order all requirements covered by the contract from the contractor, unless certain circumstances apply.

FAR clause, 52.216-21, Requirements, advises contractors of the same information in the DFARS clause, and also provides a date after which the contractor is not required to make any deliveries under the contract. The DFARS clause is no longer necessary, because the FAR clause applies to the situations in which the DFARS clause is prescribed for use and covers the information contained in the DFARS clause. As such, this DFARS clause is now redundant and can be removed.

The removal of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD

established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notification of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the Federal Register at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this provision. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.216-7010, Requirements, and determined that the DFARS coverage was redundant and recommended removal.

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 add any new solicitation provisions or contract clauses. This rule only removes obsolete DFARS provision 252.216-7010, Requirements. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

III. 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 (OIRA), 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).

IV. Executive Order 13771

This rule is not an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

V. 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 the 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 DoD is not issuing a new regulation; rather, this rule merely removes an obsolete clause from the DFARS.

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 V. 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 216, 247, and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 216, 247, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 216, 247, and 252 continues to read as follows:

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

PART 216 - TYPES OF CONTRACTS

216.506 [Amended]

2. In section 216.506, remove paragraph (d).

PART 247—TRANSPORTATION

247.271-3 [Amended]

3. In section 247.271-3, remove paragraph (p).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.216-7010 [Removed]

4. Remove section 252.216-7010.

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