



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 208, 212, 214, 215, 216, 225, and 252

[Docket DARS-2018-0033]

RIN 0750-AJ93

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Pricing Adjustments" (DFARS Case 2018-D032)

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 rendering the DFARS clause unnecessary.

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 252.215-7000, Pricing Adjustments, the clause prescription at DFARS 215.408, and the associated cross-references at DFARS 208.404,

212.301, 214.201, 216.506, 225.870, and introductory text for various 252.215 clauses to adjust clause prescription references.

The DFARS clause is included in solicitations and contracts that contain the FAR clause 52.215-11, Price Reduction for Defective Certified Cost or Pricing Data—Modifications, FAR 52.215-12, Subcontractor Certified Cost or Pricing Data, or FAR 52.215-13, Subcontractor Certified Cost or Pricing Data—Modifications. DFARS clause 252.215-7000 defines the term “pricing adjustment” as the aggregate increases and/or decreases in cost plus applicable profits. This term is adequately defined in the associated FAR clauses and this DFARS clause can be removed.

The removal of this DFARS text 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 252.215-7000, Pricing Adjustments, 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 clause 252.215-7010, Pricing Adjustments. 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 208, 212, 214, 215, 216, 225, and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 208, 212, 214, 215, 216, 225, and 252 are amended as follows:

1. The authority citation for parts 208, 212, 214, 215, 216, 225, and 252 continues to read as follows:

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

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.404 [Amended]

2. Amend section 208.404, in paragraph (a)(iv), by removing “215.408(3)” and “215.408(4)” and adding “215.371-6” and “215.408(3)” in their place, respectively.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

3. Amend section 212.301 by—

a. In paragraph (f)(vi)(A), removing “215.408(3)(i)” and adding “215.408(2)(i)” in its place;

b. In paragraph (f)(vi)(B), removing “215.408(3)(ii)” and adding “215.408(2)(ii)” in its place;

c. In paragraph (f)(vi)(D), removing “215.408(4)” and adding “215.408(3)” in its place;

d. In paragraph (f)(vi)(E), removing “215.408(6)(i)” and adding “215.408(5)(i)” in its place;

e. In paragraph (f)(vi)(E)(1), removing “215.408(6)(i)(A)” and adding “215.408(5)(i)(A)” in its place; and

f. In paragraph (f)(vi)(E)(2), removing “215.408(6)(i)(B)” and adding “215.408(5)(i)(B)” in its place.

PART 214—SEALED BIDDING

214.201-6 [Amended]

4. Amend section 214.201-6 by removing "215.408(3) and (4)" and adding "215.371-6 and 215.408(3)" in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.408 [Amended]

5. Amend section 215.408 by—

a. Removing paragraph (1);

b. Redesignating paragraphs (2) through (7) as paragraphs (1) through (6);

c. In newly redesignated paragraph (2)(i)(A)(2), removing "paragraph (3)(i)(A)(1)" and adding "paragraph (2)(i)(A)(1) of this section" in its place; and

d. In newly redesignated paragraphs (2)(ii)(A)(2) and (2)(ii)(A)(3)(i), removing "paragraph (3)(ii)(A)(1)" and adding "paragraph (2)(ii)(A)(1) of this section" in its place.

PART 216—TYPES OF CONTRACTS

216.506 [Amended]

6. Amend section 216.506, in paragraph(S-70), by removing "215.408(3) and (4)" and adding "215.371-6 and 215.408(3)" in its place.

PART 225—FOREIGN ACQUISITION

225.870-4 [Amended]

7. Amend section 225.870-4, in paragraph (c) (3), by removing "215.408(3) (i) and (ii)" and adding "215.408(2) (i) and (ii)" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215-7000 [Removed and Reserved]

8. Remove and reserve 252.215-7000.

252.215-7002 [Amended]

9. Amend section 252.215-7002, in the introductory text, by removing "215.408(2)" and adding "215.408(1)" in its place.

252.215-7003 [Amended]

10. Amend section 252.215-7003, in the introductory text, by removing "215.408(3) (i)" and adding "215.408(2) (i)" in its place.

252.215-7004 [Amended]

11. Amend section 252.215-7004, in the introductory text, by removing "215.408(3) (ii)" and adding "215.408(2) (ii)" in its place.

252.215-7008 [Amended]

12. Amend section 252.215-7008, in the introductory text, by removing "215.408(4)" and adding "215.408(3)" in its place.

252.215-7009 [Amended]

13. Amend section 252.215-7009 by, in the Basic clause introductory text, removing "215.408(5)" and adding "215.408(4)" in its place.

252.215-7010 [Amended]

14. Amend section 252.215-7010 by—

a. In the Basic clause introductory text, removing “215.408(6)(i) and (6)(i)(A)” and adding “215.408(5)(i) and (5)(i)(A)” in its place; and

b. In the Alternate I clause introductory text, removing “215.408(6)(i) and (6)(i)(B)” and adding “215.408(5)(i) and (5)(i)(B)” in its place.

252.215-7011 [Amended]

15. Amend section 252.215-7011, in the introductory text, by removing “215.408(6)(ii)” and adding “215.408(5)(ii)” in its place.

252.215-7012 [Amended]

16. Amend section 252.215-7012, in the introductory text, by removing “215.408(6)(iii)” and adding “215.408(5)(iii)” in its place.

252.215-7013 [Amended]

17. Amend section 252.215-7013, in the introductory text, by removing “215.408(7)” and adding “215.408(6)” in its place.

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