



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217 and 252

[Docket DARS-2018-D036]

RIN 0750-AJ87

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Surge Option" (DFARS Case 2018-D025)

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 revise a clause to reflect current terminology and industry practices, pursuant to action taken by the DoD Regulatory Reform Task Force.

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 published a proposed rule in the *Federal Register* at 83 FR 30659 on June 29, 2018, to modify DFARS clause 252.217-7001,

Surge Option, to replace the term "Production Surge Plan (DI-MGMT-80969)" with "Capabilities Analysis Plan (CAP)" and add text to permit the option increase of supplies or services called for under the clause to be expressed as a specific number. The associated clause prescription at DFARS 217.208-70(b) is amended to reflect that the option increase of supplies or services may also be expressed as a specific number. This rule supports a recommendation from the DoD Regulatory Reform Task Force under Executive Order (E.O.) 13777, Enforcing the Regulatory Reform Agenda.

One respondent submitted a public comment in response to the proposed rule. The comment is outside the scope of this case and no changes are made in the final rule.

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 propose to create any new provisions or clauses. The proposed changes to DFARS clause 252.217-7001, Surge Option, are minimal and reflect only updates required to mirror current industry terminology and practice for support that may be required for industrial planning for selected essential military items in the event of an emergency. The rule continues to apply to contracts below the simplified acquisition

threshold, however, the rule does not apply to commercial items, including commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

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 final rule is not subject to E.O. 13771, because this rule is not significant under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise a clause to reflect current terminology and industry practices. The objective of this rule is to improve the flexibility offered to contractors submitting pricing for surge options by giving them the option to quote prices by percentage or quantity increases, and to update the terminology used from "Production Surge Plan" to "Capability Analysis Plan" (CAP), since this is the most current and accurate term for this type of plan. The modification of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force under E.O. 13777, Enforcing the Regulatory Reform Agenda.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule is not expected 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., because the scope of the rule limits the application of the reporting requirement to a small number of service contracts. Based on fiscal year 2017 data from the Federal Procurement Data System, the Government issued approximately 78

contract actions that used mobilization or essential research and development as the reason for other than full and open competition. Of the 78 contract actions, approximately 33 awards were made to 24 unique small entities.

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

There are no known significant alternative approaches to the rule that would meet the proposed objectives.

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 217 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 217 and 252 are amended as follows:

1. The authority citation for parts 217 and 252 continues to read as follows:

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

PART 217—SPECIAL CONTRACTING METHODS

217.208-70 [Amended]

2. In section 217.208-70, amend paragraph (b)(1), by removing "percentage" and adding "percentage or quantity" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 252.217-7001 by—

a. Removing the clause date of "(AUG 1992)" and adding "(DEC 2018)" in its place;

b. Revising paragraph (a)(1);

c. In paragraph (b)(1), removing "Production Surge Plan (DI-MGMT 80969)" and adding "Capabilities Analysis Plan (CAP)" in its place; and

d. In paragraph (b)(2), removing "Production Surge Plan" and adding "CAP" in its place.

The revision reads as follows:

252.217-7001. Surge option.

* * * * *

(a) * * *

(1) Increase the quantity of supplies or services called for under this contract by no more than ___ percent or ____ *[insert quantity and description of services or supplies to be increased]*; and/or

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