



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 218, 237, and 252**

**[Docket DARS-2019-0054]**

**RIN 0750-AK61**

**Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision "Award to Single Offeror" (DFARS Case 2019-D024)**

**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 no longer necessary.

**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**

DFARS provision 252.237-7002, Award to Single Offeror, is included in solicitations for mortuary services that use sealed bidding procedures. The Alternate I provision is included in all solicitations for mortuary services that use negotiated

procedures. The provision and the alternate advise offerors that an award will be made to a single offeror, that they must include a unit price for each item to be considered for award, and the Government will evaluate offers on the basis of the estimated quantities shown. The provision then advises offerors that award will be made to the responsive, responsible offeror whose total offer is the lowest price to the Government, while the alternate advises offerors that award will be made to the responsive, responsible offeror whose total offer is the best value to the Government.

However, the contents of this DFARS provision are contained in other parts of the solicitation. Specifically, DoD policy and DFARS 237.7001 require the solicitation and award of mortuary services to be accomplished using a requirements contract. Federal Acquisition Regulations (FAR) 16.503 advises that a requirements contract provides for filling all requirements of designated activities for supplies or services during a specified contract period from one contractor. FAR clause 52.216-21, Requirements, is included in all solicitations for and awards of requirements contracts, and advises offerors of the Government's obligation described at FAR 16.503. As such, only single awards can be made in response to a mortuary services solicitation and the disclosure of this information in the DFARS provision is redundant.

When a solicitation is issued, a contracting officer identifies the type of contract that will be awarded via FAR clause 52.216-1, Type of Contract, and must include a section in the solicitation document that identifies the basis upon which award will be made, along with all relevant evaluation factors. The remaining information in the DFARS provision is addressed elsewhere in the solicitation and is no longer necessary.

## **II. Discussion and Analysis**

The removal of this DFARS provision implements 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 notice 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 clause. The DoD Regulatory Reform Task Force reviewed the requirements

of DFARS clause 252.237-7002, determined that the DFARS coverage was unnecessary, and recommended its removal from the DFARS.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule only removes obsolete DFARS provision 252.237-7002. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

**IV. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the FAR is 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 is merely removing an obsolete solicitation provision from the DFARS.

**V. Executive Orders 12866 and 13563**

E.O.s 12866 and E.O. 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.

**VI. Executive Order 13771**

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

**VII. 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 IV. 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.

#### **VIII. 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 218, 237, and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 218, 237, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 218, 237, and 252 continues to read as follows:

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

#### **PART 218—EMERGENCY ACQUISITIONS**

##### **218.170 [Amended]**

2. Amend section 218.170 in paragraph (k) by removing "See 237.7003(b)" and adding "See 237.7003(a)" in its place.

#### **PART 237—SERVICE CONTRACTING**

##### **237.7003 [Amended]**

3. Amend section 237.7003 by-
  - a. Removing paragraph (a); and
  - b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

**PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.237-7002 [Removed and Reserved]**

4. Remove and reserve section 252.237-7002.

**252.237-7003 [Amended]**

5. Amend section 252.237-7003 introductory text by removing "237.7003(b)" and adding "237.7003(a) and (a)(1)" in its place.

**252.237-7004 [Amended]**

6. Amend section 252.237-7004 introductory text by removing "237.7003(b)" and adding "237.7003(a) and (a)(2)" in its place.

**252.237-7005 [Amended]**

7. Amend section 252.237-7005 introductory text by removing "237.7003(b)" and adding "237.7003(a) and (a)(3)" in its place.

**252.237-7006 [Amended]**

8. Amend section 252.237-7006 introductory text by removing "237.7003(b)" and adding "237.7003(a) and (a)(4)" in its place.

**252.237-7007 [Amended]**

- Amend section 252.237-7007 introductory text by removing "237.7003(b)" and adding "237.7003(a) and (a)(5)" in its place.

**252.237-7008 [Amended]**

Amend section 252.237-7008 introductory text by removing "237.7003(b)" and adding "237.7003(a) and (a)(6)" in its place.

**252.237-7009 [Amended]**

Amend section 252.237-7009 introductory text by removing "237.7003(b)" and adding "237.7003(a) and (a)(7)" in its place.

**252.237-7011 [Amended]**

Amend section 252.237-7011 introductory text by removing "237.7003(b)" and adding "237.7003(a) and (a)(8)" in its place.

[FR Doc. 2019-19563 Filed: 9/12/2019 8:45 am; Publication Date: 9/13/2019]