



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, and 252

[Docket DARS-2017-0016]

RIN 0750-AJ55

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision "Alternative Line Item Structure" (DFARS Case 2017-D045)

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 provision that provided guidelines to offerors when proposing an alternative line item structure in response to a solicitation.

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 DFARS provision 252.204-7011, Alternative Line Item Structure, the associated

prescription at DFARS 204.7109(b), and a cross-reference at DFARS 212.301(f) (ii) (C). DFARS provision 252.204-7011 advises offerors that they may propose an alternative to the contract line item structure included in the solicitation. The purpose of this provision is to ensure that the resulting contract structure is economically and administratively advantageous to both the Government and the contractor. This provision is prescribed for use in all solicitations that use Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial items or for the initial provisioning of spares.

However, this DFARS provision is duplicative of the information provided in FAR provision 52.204-22, Alternative Line Item Proposal, which is included in all solicitations. When the DFARS provision was implemented, no standardized guidance on line item structure existed for the Government or contractors. A final rule was published in the Federal Register on January 13, 2017, at 82 FR 4709 to implement a uniform line item structure in the FAR for all Federal Government. That final rule established FAR provision 52.204-22, Alternate Line Item Proposal, which covers the information included in DFARS 252.204-7011. As a result, the DFARS provision is now redundant and can be removed.

The removal of this DFARS provision 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 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 provision. Subsequently, the DoD Task Force reviewed the requirements of DFARS 252.204-7011, Alternate Line Item Structure, 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 only removes obsolete DFARS provision 252.204-7011, Alternate A, System for Award Management. 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 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.

IV. Executive Order 13771

This rule is not an E.O. 13771, Reducing and Controlling Regulatory Costs, regulatory action, because this rule is not significant under EO 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 requirement 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 III. 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 204, 212, and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, and 252 are amended as follows:

1. The authority citation for parts 204, 212, and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

2. Revise section 204.7109 to read as follows:

204.7109 Contract clause.

Use the clause at 252.204-7006, Billing Instructions, in solicitations and contracts if Section G includes—

(a) Any of the standard payment instructions at PGI 204.7108) (d) (1) through (6); or

(b) Other payment instructions, in accordance with PGI 204.7108(d) (12), that require contractor identification of the contract line item(s) on the payment request.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

3. Amend section 212.301 by—

a. Removing paragraph (f) (ii) (C); and

b. Redesignating paragraphs (f) (ii) (D) through (G) as paragraphs (f) (ii) (C) through (F), respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204-7011 [Removed and Reserved]

4. Remove and reserve section 252.204-7011.

[FR Doc. 2018-11339 Filed: 5/29/2018 8:45 am; Publication Date: 5/30/2018]