



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

[Docket DARS-2019-0007]

RIN 0750-AK45

Defense Federal Acquisition Regulation Supplement: Repeal of Congressional Notification for Certain Task- and Delivery-Order Contracts (DFARS Case 2018-D076)

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 make clarifications and updates associated with determinations to award task- or delivery-order contracts estimated to exceed \$112 million to a single source.

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 clarify that the Congressional notification required at Federal Acquisition Regulation (FAR) 16.504(c)(1)(ii)(D)(2) does not apply to DoD acquisitions. Currently, FAR 16.504(c)(1)(ii)(D)(2) requires the head of the agency to notify Congress within 30 days after making a determination that it is in the public interest to award a task- or delivery-order contract in an amount exceeding \$112 million to a single source due to exceptional circumstances. This notification requirement is codified at 41 U.S.C. 4103(d)(3)(B). 41 U.S.C. 4103 does not apply to DoD; therefore, the DFARS is being amended to clarify that this reporting requirement does not apply to DoD acquisitions.

Additionally, DFARS 216.504(c)(1)(ii)(D) requires that a copy of a written determination, made in accordance with FAR 16.504(c)(1)(ii)(D), to award a task- or delivery-order contract with a value greater than \$112 million to a single source be submitted to the Director, Defense Pricing and Contracting (DPC). DFARS 216.504(c)(1)(ii)(D)(1) prohibits these determinations from being made by an individual below the level of the senior procurement official.

The statutory requirements for DoD to report or provide notifications on these determinations have been rescinded and, as a result, there is no longer a need for a copy of these determinations to be submitted to DPC or to restrict delegation

of this the authority. Therefore, this rule removes the text at DFARS 216.504(c)(1)(ii)(D) and modifies the text at DFARS 216.504(c)(1)(ii)(D)(1) to remove the restriction on the delegation of authority to make the determination.

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 create any new provisions or clauses or impact any existing provisions or clauses.

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

The statute that applies to the publication of the 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 it simply amends and clarifies processes that are internal to the agency.

IV. 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, 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).

V. Executive Order 13771

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

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 Part 216

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

1. The authority citation for part 216 continues to read as follows:

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

2. Revise 216.504 to read as follows:

216.504 Indefinite-quantity contracts.

(c) *Multiple award preference—(1) Planning the acquisition.*

(ii) (D) (1) The senior procurement executive has the authority

to make the determination authorized in FAR
16.504(c)(1)(ii)(D)(1).

(i) In accordance with section 816 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232), when making the determination at FAR 16.504(c)(1)(ii)(D)(1)(i), the senior procurement executive shall determine that the task or delivery orders expected under the contract are so integrally related that only a single source can "efficiently perform the work," instead of "reasonably perform the work" as required by the FAR.

(2) The congressional notification requirement at FAR 16.504(c)(1)(ii)(D)(2) does not apply to DoD.

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