



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 211 and 252**

**[Docket DARS-2020-0006]**

**RIN 0750-AK60**

**Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Substitutions for Military or Federal Specifications and Standards" (DFARS Case 2019-D023)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove internal agency guidance and a clause that is no longer necessary, pursuant to action taken by the Regulatory Reform Task Force.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2019-D023, using any of the following methods:

- o *Regulations.gov*: <http://www.regulations.gov>. Search for "DFARS Case 2019-D023" under the heading "Enter keyword or ID"

and selecting "Search." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2019-D023" on any attached document.

- o *Email:* *osd.dfars@mail.mil*. Include DFARS Case 2019-D023 in the subject line of the message.

- o *Fax:* 571-372-6094.

- o *Mail:* Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This rule proposes to remove DFARS subpart 211.273, Substitutions for Military or Federal Specifications and Standards, and DFARS clause 252.211-7005, Substitutions for Military or Federal Specifications and Standards, from the DFARS as the guidance and clause are no longer necessary.

## **II. Discussion and Analysis**

DFARS clause 252.211-7005 is included in solicitations and contracts for the acquisition of previously developed items. The clause encourages offerors to propose Single Process Initiative (SPI) processes in lieu of military or Federal specifications; provides a link to a Defense Contract Management Agency guidebook that lists currently accepted SPI processes; and requires the offeror, when proposing to use an SPI process, to provide certain information with its offer.

DFARS subpart 211.273 provides DoD contracting officers internal guidance on the use and acceptance of SPI processes in lieu of specific military or Federal specifications and standards in contracts and include the prescription for use of DFARS clause 252.211-7005.

The SPI process was established to aid DoD and contractors in the transition from an acquisition environment of strict adherence to military specifications to a balanced approach of commercial practices and military specifications. The SPI permits offerors to propose alternatives to military or Federal specifications and standards cited in DoD solicitations for previously developed items. When SPI was established, DoD was responsible for the management and oversight of the initiative through the use of a Management Council, which included representatives of the contractor, the military departments, and

the Defense Contract Management Agency, and the Defense Contract Audit Agency.

Since the implementation of the SPI, acquisition reform efforts have provided additional latitude to contracting officers and contractors to utilize performance specifications and commercial standards, in lieu of military and Federal specifications and standards. As a result, the use of SPI has declined since its inception and oversight and management of the initiative has transferred from a DoD-enterprise responsibility to a DoD component-level responsibility. Each component may manage the initiative to support its individual needs and requirements; therefore, DoD enterprise-level guidance to contracting officers and contractors is no longer necessary and can be removed from the DFARS.

The removal of this DFARS text and clause 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 clause. The DoD Task Force reviewed the requirements of DFARS clause 252.211-7005, determined that the DFARS coverage is no longer necessary, 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 proposed rule only removes obsolete internal guidance and clause 252.211-7005 from the DFARS. 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. Executive Orders 12866 and 13563**

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.

**V. 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.

**VI. Regulatory Flexibility Act**

DoD does not expect this proposed rule 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 rule is not creating any new requirements for contractors or changing any existing policies and practices. However, an initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

The Department of Defense is proposing to repeal DFARS subpart 211.273, Substitutions for Military or Federal Specifications and Standards, and DFARS clause 252.211-7005, Substitutions for Military or Federal Specifications and Standards, as the guidance and clause are no longer necessary.

The objective of this proposed rule is to remove outdated guidance from the DFARS and reduce regulatory burden on the public. The repeal of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force.

DoD does not collect data on the number of small businesses that proposed an SPI process in lieu of military or Federal specifications or standards cited in the solicitation. Instead, DoD subject matter experts estimate that approximately 10 contractors participate in SPI and that each participant will respond to one solicitation per year. Based on the information available, DoD does not anticipate that this rule will significantly impact small business entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known alternative to the rule that will meet the stated objectives or minimize the impact on of the rule on small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2019-D023) in correspondence.

## **VII. Paperwork Reduction Act**

This rule removes the burden associated with DFARS 252.211-7005 from the information collection requirement currently

approved under OMB Control Number 0704-0398, entitled DFARS Part 211, Describing Agency Needs, and Related Clauses at DFARS 252.211. This reduction in burden is reflected in the proposed revision to and extension of the information collection, as published in the *Federal Register* on February 27, 2020, at 85 FR 11351.

**List of Subjects in 48 CFR Parts 211 and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 211 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

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

**PART 211—DESCRIBING AGENCY NEEDS**

**211.273 [Removed and Reserved]**

2. Remove and reserve section 211.273.

**211.273-1 through 211.273-4 [Removed]**

3. Remove sections 211.273-1 through 211.273-4.

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

**252.211-7005 [Removed and Reserved]**

4. Remove and Reserve section 252.211-7005.

