



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

[Docket DARS-2020-0015]

RIN 0750-AK91

Defense Federal Acquisition Regulation Supplement: Repeal of Annual Reporting Requirements to Congressional Defense Committees (DFARS Case 2020-D004)

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 implement a section of the National Defense Authorization Act for Fiscal Year 2018.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 571-372-6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 1051 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY)

2018 (Pub. L. 115-91). Section 1051 repealed numerous DoD reporting requirements to Congress, to include the annual reporting requirements for commercial items and exceptional case exceptions and waivers under section 817 of the NDAA for FY 2003 (Pub. L. 107-314). The section 817 reporting requirements and guidance regarding exceptions and waivers to cost or pricing data requirements were implemented at DFARS 215.403-3(c). Pursuant to section 1051, this rule removes the reporting requirements and guidance.

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 or revise any solicitation provisions or contract clauses. This rule removes rescinded reporting requirements for exceptions and waivers of cost or pricing data to congressional defense committees.

III. 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 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 the rule merely removes two statutory reporting requirements that have been rescinded.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.) 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.

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

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 requirement 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 215

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 215 is amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority for 48 CFR part 215 continues to read as follows:

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

2. Amend section 215.403-1 by—
 - a. In paragraph (c) (3) (A) removing “PGI 215.403-1(c) (3) (A)” and adding “PGI 215.403-1(c) (3)” in its place;
 - b. Removing paragraph (c) (3) (B);
 - c. Redesignating paragraph (c) (3) (C) as paragraph (c) (3) (B);and
- d. Revising paragraph (c) (4) (B).

The revision reads as follows:

215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

* * * * *

(c) * * *

(4) * * *

(B) By November 30th of each year, departments and agencies shall provide a report to the Director, Defense Pricing and Contracting, Pricing and Contracting Initiatives (DPC/PCI), of all waivers granted under FAR 15.403-1(b) (4), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$19.5 million or more. See PGI 215.403-1(c) (4) (B) for the format and guidance for the report.

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