



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216 and 252

[Docket DARS-2020-0028]

RIN 0750-AL10

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Ordering" (DFARS Case 2020-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 clause 252.216-7006, Ordering, is included in DoD solicitations and contracts when an indefinite-delivery/definite-quantity, requirements, or indefinite-delivery/indefinite-quantity contract type is contemplated. The

clause notifies contractors of the ordering period for the contract, that orders are subject to the terms and conditions of the contract, and that an order is considered issued by the Government if sent via fax, U.S. mail, or electronic commerce. The DFARS clause is used in lieu of FAR clause 52.216-18, Ordering.

The FAR clause is included in the same solicitations and contracts as the DFARS clause and advises contractors of most of the information included in the DFARS clause, except for when an order is considered issued by the Government if sent to the contractor via fax or electronic commerce. In an effort to reflect current business practices and maintain speed and efficiency in the ordering process, a final rule (85 FR 40075) issued under FAR case 2018-022 amended FAR clause 52.216-18 to automatically authorize the use of fax and electronic commerce methods to issue orders under the contract and clarify when an order is considered issued by the Government if sent to the contractor via these methods. As the FAR clause now includes the same information as the DFARS clause, DFARS clause 252.216-7006 is duplicative and no longer necessary and can be removed from the DFARS.

The removal of this DFARS clause 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 Task Force reviewed the requirements of DFARS clause 252.216-7006, Ordering, and determined that the DFARS coverage was not necessary and recommended removal, contingent upon similar language being implemented in FAR clause 52.216-18.

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 clause 252.216-7006, Ordering. 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. 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 is merely removing an obsolete clause from the DFARS.

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

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 216 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 216 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

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

PART 216—TYPES OF CONTRACTS

216.506 [Amended]

2. Amend section 216.506 by removing paragraph (a).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.216-7006 [Removed and Reserved]

3. Remove and reserve section 252.216-7006.

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