



5001-06-P

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 205, 211, 212, 215, 217, 219, 225, 228, 236, 237, 246, 250, and 252

[Docket DARS-2020-0002]

RIN 0750-AK76

Defense Federal Acquisition Regulation Supplement: Inflation Adjustment of Acquisition-Related Thresholds (DFARS Case 2019-D036)

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 the inflation adjustment of acquisition-related dollar thresholds. A statute requires an adjustment every five years of acquisition-related thresholds for inflation using the Consumer Price Index for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds. DoD also used the same methodology to adjust some nonstatutory DFARS acquisition-related thresholds.

DATES: Effective October 1, 2020.

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

SUPPLEMENTARY INFORMATION:

I. Background

This rule amends multiple DFARS parts to further implement 41 U.S.C. 1908. Section 1908 requires an adjustment every five years (on October 1 of each year evenly divisible by five) of statutory acquisition-related thresholds for inflation, using the Consumer Price Index (CPI) for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds (see FAR 1.109). As a matter of policy, DoD also uses the same methodology to adjust some nonstatutory DFARS acquisition-related thresholds.

DoD published a proposed rule in the *Federal Register* at 85 FR 19716 on April 8, 2020. The preamble to the proposed rule contained detailed explanation of—

- What an acquisition-related threshold is;
- What acquisition-related thresholds are not subject to escalation adjustment under this case; and
- How DoD analyzes statutory and non-statutory acquisition-related thresholds.

No respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

Although there were no public comments, two corrections were made to the final rule to: (1) add the threshold at DFARS 215.403-1(c)(4)(B) and 225.7201; and (2) update the threshold pointer, an address, and webpage citation at DFARS 252.225-7004.

Although the actual CPI of 258.115 for March 2020 was lower than the projected CPI of 258.606 for March 2020 used for the proposed rule, the difference was insignificant and did not result in revisions to any proposed threshold increases. The final rule is based on the actual CPI of 258.115 for March 2020. The CPI as of the end of March 2020, 6 months before the effective date of the rule, is used as the cutoff in order to allow time for approval and publication of the final rule.

III. 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, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the simplified acquisition threshold, or for commercial items, including COTS items.

IV. 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.

V. Executive Order 13771

The 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 has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

This rule amends the Defense Federal Acquisition Regulation Supplement to implement 41 U.S.C. 1908 and other acquisition-related dollar thresholds that are based on policy rather than statute in order to adjust for the changing value of the dollar. 41 U.S.C. 1908 requires adjustment every five years of statutory acquisition-related dollar thresholds, except for Construction

Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds. While reviewing all statutory acquisition-related thresholds, this case presented an opportunity to also review all nonstatutory acquisition-related thresholds in the DFARS that are based on policy. The objective of the rule is to maintain the status quo, by adjusting acquisition-related thresholds for inflation.

This rule will likely affect to some extent all small business concerns that submit offers or are awarded contracts by the Department of Defense (DoD). However, the threshold changes in this rule are not expected to have any significant economic impact on small business concerns because they are intended to maintain the status quo by adjusting for changes in the value of the dollar. Data generated from the Federal Procurement Data System (FPDS) for fiscal years 2017 through 2019, indicates that the DoD has awarded an average of 1,494,202 contracts to 56,851 unique small entities during the three year period. It is assumed that all 56,851 unique small entities may be affected by this rule, however, the impact will most likely be beneficial, by preventing burdensome requirements from applying to more and more acquisitions, as the dollar loses value.

The rule does not impose any new reporting, recordkeeping, or compliance requirements. Changes in thresholds for approved

information collection requirements are intended to maintain the status quo and prevent those requirements from increasing over time.

There are no practical alternatives that will accomplish the objectives of the statute.

VII. Paperwork Reduction Act

The Paperwork Reduction Act does apply. The changes to the DFARS do not impose new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et seq. By adjusting the thresholds for inflation, the status quo for the current information collection requirements are maintained under OMB clearance numbers 0704-0229, DFARS Part 225, Foreign Acquisition and related clauses and 0704-0286, DFARS Part 205, Publicizing Contract Actions and Provision of Information to Cooperative Agreement Holders.

List of Subjects in 48 CFR Parts 203, 205, 207, 211, 212, 215, 217, 219, 225, 228, 232, 234, 236, 237, 250, and 252

Government Procurement

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 203, 205, 211, 212, 215, 217, 219, 225, 228, 236, 237, 246, 250, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 203, 205, 211, 212, 215, 217, 219, 225, 228, 236, 237, 246, 250, and 252 continues to read as follows:

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

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.1004 [Amended]

2. Amend section 203.1004 in paragraph (b)(2)(ii) by removing “\$5.5 million” and adding “\$6 million” in its place.

PART 205—PUBLICIZING CONTRACT ACTIONS

205.303 [Amended]

3. Amend section 205.303 by removing “\$7 million” wherever it appears and adding “\$7.5 million” in its place.

205.470 [Amended]

4. Amend section 205.470 by removing “\$1,000,000” and adding “\$1.5 million” in its place.

PART 211—DESCRIBING AGENCY NEEDS

211.503 [Amended]

5. Amend section 211.503 in paragraph (b) by removing “\$700,000” and adding “\$750,000” in its place in two places.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.271 [Amended]

6. Amend section 212.271 by removing “\$40,000” and adding “\$45,000” in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.403-1 [Amended]

7. Amend section 215.403-1 in paragraph (c)(4)(B) by removing "\$19.5 million" and adding "\$20 million" in its place.

PART 217—SPECIAL CONTRACTING METHODS

217.170 [Amended]

8. Amend section 217.170 in paragraphs (d)(1)(iv) and (d)(5) introductory text by removing "\$135.5 million" and adding "\$150 million" in its place in both places.

217.171 [Amended]

9. Amend section 217.171 in paragraph (d) by removing "\$678.5 million" and adding "\$750 million" in its place.

217.172 [Amended]

10. Amend section 217.172 in paragraphs (c), (d), and (f)(1) and (2) by removing "\$678.5 million" and adding "\$750 million" in its place wherever it appears.

PART 219—SMALL BUSINESS PROGRAMS

219.502-2 [Amended]

11. Amend section 219.502-2 in paragraph (1) by removing "\$2.5 million" and adding "\$3 million" in its place.

PART 225—FOREIGN ACQUISITION

12. Revise section 225.7201 to read as follows:

225.7201 Policy.

10 U.S.C. 2410g requires offerors and contractors to notify DoD of any intention to perform any part of a DoD contract outside the United States and Canada that—

- (a) Exceeds \$750,000 in value; and
- (b) Could be performed inside the United States or Canada.

225.7204 [Amended]

12. Amend section 225.7204 in paragraphs (a) and (b) by removing “\$13.5 million” and adding “\$15 million” in its place in both places.

225.7703-2 [Amended]

13. Amend section 225.7703-2—

- a. In paragraph (b) (2) (i) by removing “\$93 million” and adding “\$100 million” in its place; and
- b. In paragraph (b) (2) (ii) introductory text by removing “Director, Defense Procurement and Acquisition Policy” and adding “Principal Director, Defense Pricing and Contracting” in its place and by removing “\$93 million” and adding “\$100 million” in its place.

PART 228—BONDS AND INSURANCE

228.102-1 [Amended]

14. Amend section 228.102-1 in the introductory text and paragraph (1) by removing “\$35,000” and adding “\$40,000” in its place in both places.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.303-1 [Amended]

15. Amend section 236.303-1 in paragraph (a)(4)(i) introductory text and (a)(4)(ii) by removing "\$4 million" and adding "\$4.5 million" in its place in both places.

PART 237—SERVICE CONTRACTING

237.170-2 [Amended]

16. Amend section 237.170-2 in paragraphs (a)(1) and (2) by removing "\$93 million" and adding "\$100 million" in its place in both places.

PART 246—QUALITY ASSURANCE

17. Amend section 246.402 introductory text by removing "\$300,000" and adding "\$350,000" in its place.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

250.102-1 [Amended]

18. Amend section 250.102-1 in paragraph (b) by removing "\$70,000" and adding "\$75,000" in its place.

250.102-1-70 [Amended]

19. Amend section 250.102-1-70 in paragraph (b)(1) by removing "\$70,000" and adding "\$75,000" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7003 [Amended]

20. Amend section 252.225-7003 by—

a. Removing the clause date "(OCT 2015)" and adding "(OCT 2020)" in its place; and

b. In paragraph (b) (1), removing "\$13.5 million" and adding "\$15 million" in its place; and

c. In paragraph (b) (2) (i) removing "\$700,000" and adding "\$750,000" in its place.

252.225-7004 [Amended]

21. Amend section 252.225-7004 by—

a. Removing the clause date "(MAY 2019)" and adding "(OCT 2020)" in its place;

b. In paragraph (b) (1), removing "225.870-4(c) (2) (i) (A) (1)" and adding "225.7201(a)" in its place;

c. In paragraph (c) (5) removing "Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), OUSD(AT&L) DPAP/CPIC" and adding "Principal Director, Defense Pricing and Contracting (Contract Policy), OUSD(A&S) DPC/CP" in its place; and

d. In paragraph (d) (2), removing "<http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>" and adding "<https://www.esd.whs.mil/Directives/forms/>" in its place.