



**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 216**

**[Docket DARS-2020-0032]**

**RIN 0750-AL02**

**Defense Federal Acquisition Regulation Supplement: Modification of Determination Requirement for Certain Task- or Delivery-Order Contracts (DFARS Case 2020-D016)**

**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 2020 that revises contract file documentation requirements when awarding a task- or delivery order-contract in excess of \$100 million to a single source.

**DATES:** Effective October 1, 2020.

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

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is issuing a final rule amending the DFARS to implement section 816 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92). Section 816 amends 10 U.S.C. 2304a to permit the award of a DoD task- or delivery-order contract estimated to exceed \$100 million (including all options) to a single source without a written determination by the head of the agency, if the head of the agency made a written determination that other than competitive procedures were authorized for the award of such contract.

The requirement for the written determination required by 10 U.S.C. 2304a is implemented at Federal Acquisition Regulation (FAR) 16.504(c)(1)(ii)(D), which prohibits the award of a task- or delivery-order contract in excess of \$100 million to a single source, unless the head of the agency makes a written determination that the acquisition meets one of four specific circumstances that necessitate an award to a single source.

To implement 10 U.S.C. 2304a, as amended by section 816, this final rule amends DFARS section 216.504 to advise DoD contracting officers that the determination from the head of the agency pursuant to FAR 16.504(c)(1)(ii)(D)(1) is no longer required for a single-award task- or delivery-order contract valued at greater than \$100 million, if a justification for the use of other than full and open competition has been executed in accordance with FAR subpart 6.3 and DFARS subpart 206.3.

**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 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 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 updating internal operating procedures that require contracting officers to obtain certain internal documentation and authorizations prior to awarding a contract under certain acquisitions.

**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**

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 Part 216**

Government procurement.

**Jennifer D. Johnson,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, DoD is amending 48 CFR part 216 as set forth below:

### **PART 216—TYPES OF CONTRACTS**

1. The authority citation for 48 CFR part 216 continues to read as follows:

**Authority:** 10 U.S.C. 1303 and 48 CFR chapter 1.

2. Amend section 216.504 by adding new paragraph

(c) (1) (ii) (D) (3) (i) to read as follows:

#### **216.504 Indefinite-quantity contracts.**

(c) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(D) \* \* \*

(3) (i) In accordance with section 816 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L.

116-92), the determination at FAR 16.504(c)(1)(ii)(D) is not required if a justification has been executed, in accordance with FAR subpart 6.3 and subpart 206.3.

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