

(j) Must be an employee, military or civilian, of the U.S. Government, a foreign government, or a North Atlantic Treaty Organization/coalition partner. In no case shall contractor personnel serve as CORs;

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 209, 212, 215, 219, 232, 237, 243, 252, and Appendix I to Chapter 2

RIN 0750-AG38

Defense Federal Acquisition Regulation Supplement; Positive Law Codification of Title 41 U.S.C. (DFARS Case 2011-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 conform references throughout the DFARS to the new Codification of Title 41, United States Code, “Public Contracts.”

DATES: *Effective date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703-602-0328.

SUPPLEMENTARY INFORMATION:

I. Background

On January 4, 2011, Public Law 111-350 enacted a new codified version of Title 41, United States Code (U.S.C.), entitled “Public Contracts.” The purpose of this final rule is to update all references to Title 41 in the DFARS to conform to the recodification.

DoD has issued a final rule because this rule does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors. Therefore public comment is not required in accordance with 41 U.S.C. 1303.

II. Executive Orders 12866 and 13563

Executive Orders 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). Executive Order 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 Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and public comment is not required in accordance with 41 U.S.C. 1707.

IV. 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 201, 209, 212, 215, 219, 232, 237, 243, 252, and Appendix I to Chapter 2

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 209, 212, 215, 219, 232, 237, 243, 252 and appendix I to chapter II are amended as follows:

- 1. The authority citation for 48 CFR parts 201, 209, 212, 215, 219, 232, 237, 243, 252, and appendix I to chapter II continues to read as follows:

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

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.107 [Amended]

- 2. Amend section 201.107 by—
 - (a) Removing “Section” from the introductory text and adding in its place “section”; and
 - (b) Removing “425” from the introductory text and adding in its place “1304”.

201.304 [Amended]

- 3. Amend section 201.304(2) by—
 - (a) Removing “Section” and adding in its place “section”; and
 - (b) Removing “425” and adding in its place “1304”.

PART 209—CONTRACTOR QUALIFICATIONS

209.406-2 [Amended]

- 4. Amend section 209.406-2(2) by—
 - (a) Removing “Section” and adding in its place “section”;
 - (b) Removing “(Pub. L. 110-181)”;
 - and
 - (c) Removing “423(e)(3)(A)(iii)” and adding in its place “2105(c)(1)(C)”.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.207 [Amended]

- 5. Amend section 212.207—
 - (a) In paragraph (b)(i) by removing “403(12)(E)” and adding in its place “103”; and
 - (b) In paragraph (b)(iii)(A) by removing “403(12)(F)” and adding in its place “103”.

PART 215—CONTRACTING BY NEGOTIATION

- 6. Revise the heading of section 215.403-1 to read as follows:

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

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PART 219—SMALL BUSINESS PROGRAMS

219.703 [Amended]

- 7. Amend section 219.703(a) introductory text by—
 - (a) Removing “46-48” and adding in its place “8502-8504”; and
 - (b) Removing “Section” and adding in its place “section”.

PART 232—CONTRACT FINANCING

232.803 [Amended]

- 8. Amend section 232.803(d) by removing “Section 3737(e) of the Revised Statutes (41 U.S.C. 15)” and adding in its place “41 U.S.C. 6305”.

PART 237—SERVICE CONTRACTING

237.102-71 [Amended]

- 9. Amend section 237.102-71(a)(2) by removing “357(b)” and adding in its place “6701”.

PART 243—CONTRACT MODIFICATIONS

243.204-71 [Amended]

- 10. Amend section 242.204-71(c) by removing “605(c)” and adding in its place “7103”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203–7000 [Amended]

- 11. Amend section 252.203–7000 by—
- (a) Removing the clause date of “(JAN 2009)” and adding in its place “(SEP 2011)”;
- (b) In paragraph (a)(2)(i) introductory text, removing “403(16)” and adding in its place “131”; and
- (c) In paragraph (c), removing “423(e)(3)” and adding in its place “2105(c)”.

252.212–7001 [Amended]

- 12. Amend section 252.212–7001 by—
- (a) Removing the clause date of “(AUG 2011)” and adding in its place “(SEP 2011)”;
- (b) In paragraph (b)(2) removing “Section” and adding in its place “section”;
- (c) In paragraph (b)(2) removing the word “note”.

252.219–7003 [Amended]

- 13. Amend section 252.219–7003 by—
- (a) Removing the clause date of “(OCT 2010)” and adding in its place “(SEP 2011)”;
- (b) In paragraph (d), removing “46–48” and adding in its place “8502–8504”.

252.225–7001 [Amended]

- 14. Amend section 252.225–7001 by—
- (a) Removing the clause date of “(JAN 2009)” and adding in its place “(SEP 2011)”;
- (b) In paragraph (b), removing “Section 10a-d” and adding in its place “chapter 83”; and
- (c) In paragraph (b) removing “431” and adding in its place “1907”.

252.227–7037 [Amended]

- 15. Amend section 252.227–7037 by—
- (a) Removing the clause date “(SEP 1999)” and adding in its place “(SEP 2011)”;
- (b) In paragraph (e)(3), removing “601, *et seq.*” and adding in its place “7101”.

APPENDIX I TO CHAPTER 2— [Amended]

- 16. Amend section I–101.4 by removing “46” and adding in its place “8502”.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, and 252

RIN 0750–AH02

Defense Federal Acquisition Regulation Supplement (DFARS); Alternative Line Item Structure (DFARS Case 2010–D017)

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 establish a standard procedure for offerors to propose an alternative line item structure that reflects the offeror’s business practices for selling and billing commercial items and initial provisioning spares for weapon systems

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 76 FR 21847 on April 19, 2011, to add DFARS language that provides offerors the opportunity to propose an alternative line item structure in solicitations for commercial items and initial provisioning spares. This DFARS change will allow offerors to provide information about their products that may not have been known to the Government prior to issuance of the solicitation. No public comments were received regarding the proposed rule.

DoD identified the need to propose an alternative line item structure during process reviews and working group sessions that assessed destination-acceptance procedures. The process reviews performed by DoD cross-service working groups, which were chartered by the Defense Finance and Accounting System, examined issues causing problems in the receipt and acceptance phase for contract deliverables and payments.

This group determined that the level of detail in the requirements description and line item structure is not always sufficient for delivery, payment, and subsequent inventory management of the items delivered. For example, the contract line item may be for a desktop

computer, but the actual items delivered, invoiced, and inventoried may reflect a separate monitor, keyboard, and central processing unit. The resultant misalignment of transaction detail (*i.e.*, contract line item, invoiced unit, delivery and inventory unit) is the cause of failures in the electronic processes of the DoD’s business enterprise requiring manual intervention with potential delays in contractor payment.

To address this recurring problem, this rule establishes and standardizes a process to enable offerors to propose changes in their offer to the solicitation’s line item structure. Establishing such a process is a first step towards managing variation in these transactions by eliminating or reducing manual intervention.

II. 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.

III. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 does not impose any additional requirements on small businesses. Further, this change does not add to, or delete from existing requirements or authorities for entities to include alternative line item structures in their offers. This rule is formalizing a process to facilitate offerors’ ability to request changes to the line item structure.

IV. 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).