

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 202 and 239

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202 and 239 are amended as follows:

■ 1. The authority citation for parts 202 and 239 continues to read as follows:

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

### PART 202—DEFINITIONS OF WORDS AND TERMS

#### 202.101 [Amended]

■ 2. Amend section 202.101 by removing the definition of “Information technology.”

### PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 3. Amend section 239.7301 by adding the definition of “Information technology” in alphabetical order to read as follows:

#### 239.7301 Definitions.

\* \* \* \* \*

*Information technology* (see 40 U.S.C. 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or  
(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term “information technology” includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and

surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term “information technology” does not include any equipment acquired by a contractor incidental to a contract.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 207, 210, and 219

[Docket DARS–2018–0014]

RIN 0750–AJ43

#### Defense Federal Acquisition Regulation Supplement: Consolidation of Contract Requirements (DFARS Case 2017–D004)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove outdated coverage of consolidation of contract requirements. **DATES:** Effective April 13, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer D. Johnson, telephone 571–372–6100.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is amending the DFARS to remove outdated coverage of consolidation of contract requirements, which is defined at DFARS 207.170 as “the use of a solicitation to obtain offers for a single contract or multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts.” This coverage implemented 10 U.S.C. 2382, which was repealed by section 1671 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). Section 1671 also amended section 44 of the Small Business Act (15 U.S.C. 657q) to remove the requirement for DoD to comply with 10 U.S.C. 2382. As a result, DoD is now required to comply with 15 U.S.C. 657q.

10 U.S.C. 2382 imposed limitations on the use of acquisition strategies involving consolidation, including requirements to identify alternative approaches that would involve a lesser degree of consolidation and to determine that consolidation is necessary and justified. Section 44 of the Small Business Act (15 U.S.C. 657q) contains similar limitations. The Federal Acquisition Regulation (FAR) addresses consolidation, including the limitations of 15 U.S.C. 657q, at FAR 7.107. By removing the outdated DFARS coverage of consolidation, this rule will reduce confusion among the DoD contracting workforce caused by differing requirements in the FAR and DFARS.

##### II. Discussion and Analysis

This rule deletes DFARS section 207.170 in its entirety to remove the obsolete text on consolidation of contract requirements. In addition, paragraphs (a)(i)(A) and (a)(ii)(A) of DFARS section 210.001 are also deleted to remove the reference to the deleted text at DFARS 207.170. In paragraph (c)(11)(A) of the DFARS section 219.201, the reference to deleted text at DFARS 207.107 is replaced by a reference to FAR 7.107, where contract consolidate and the limitations of 15 U.S.C. 657q are currently addressed.

##### 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 the rule merely removes obsolete text from the DFARS, which affects only the internal operating procedures of the Government.

#### IV. 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 impact any existing provisions or clauses.

#### V. 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.

#### VI. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because the rule relates to agency organization, management, or personnel.

#### VII. 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.

#### VIII. 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 207, 210, and 219

Government procurement.

#### Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 207, 210, and 219 are amended as follows:

■ 1. The authority citation for parts 207, 210, and 219 continues to read as follows:

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

#### PART 207—ACQUISITION PLANNING

##### 207.170 [Removed and Reserved]

■ 2. Remove and reserve section 207.170.

##### 207.170-1 [Removed]

■ 3. Remove section 207.170-1.

##### 207.170-2 [Removed]

■ 4. Remove section 207.170-2.

##### 207.170-3 [Removed]

■ 5. Remove section 207.170-3.

#### PART 210—MARKET RESEARCH

■ 6. Amend section 210.001 by revising paragraph (a) to read as follows:

##### 210.001 Policy.

(a) In addition to the requirements of FAR 10.001(a), agencies shall—

(i) Conduct market research appropriate to the circumstances before issuing a solicitation with tiered evaluation of offers (section 816 of Pub. L. 109-163); and

(ii) Use the results of market research to determine whether the criteria in FAR part 19 are met for setting aside the acquisition for small business or, for a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract. If the contracting officer cannot determine whether the criteria are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (section 816 of Pub. L. 109-163).

\* \* \* \* \*

#### PART 219—SMALL BUSINESS PROGRAMS

##### 219.201 [Amended]

■ 7. Amend section 219.201 in paragraph (c)(11)(A) by removing “(see 207.170)” and adding “(see FAR 7.107)” in its place.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 211, 215, 219, 242, and 252

[Docket DARS-2016-0027]

RIN 0750-AJ00

#### Defense Federal Acquisition Regulation Supplement: Temporary Extension of Test Program for Comprehensive Small Business Subcontracting Plans (DFARS Case 2015-D013)

**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 sections of the National Defense Authorization Acts for Fiscal Years 2015, 2016, and 2017 to provide revisions to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans.

**DATES:** Effective April 13, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Johnson, telephone 571-372-6100.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 65606 on September 23, 2016, to implement section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291) and section 872 of the NDAA for FY 2016 (Pub. L. 114-92), to revise the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (“the Test Program”).

Section 821 of the NDAA for FY 2015 provides for contractors participating in the Test Program to report, on a semiannual basis, specific information related to their comprehensive subcontracting plans. This information is expected to assist in determining if Test Program participants have achieved cost savings while enhancing opportunities for small businesses.

In addition, section 821—

- Repeals section 402 of Public Law 101-574, which suspended liquidated damages under comprehensive small business subcontracting plans;

- Requires consideration, as part of the past performance evaluation of an offeror, of any failure to make a good