

data to determine a fair and reasonable price. If the acquisition exceeds the certified cost or pricing data threshold and an exception to the requirement for certified cost or pricing data at FAR 15.403-1(b)(2) through (5) does not apply, the cost or pricing data shall be certified.

(c) If the contracting officer is still unable to determine that the offered price is fair and reasonable, the contracting officer shall enter into negotiations with the offeror to establish a fair and reasonable price. The negotiated price should not exceed the offered price.

(d) If the contracting officer is unable to negotiate a fair and reasonable price, see FAR 15.405(d).

- 3. Amend section 215.408 by—
- a. Revising paragraph (3); and
- b. In paragraph (5) introductory text, removing “required” and adding “required or when using the provision at DFARS 252.215-7008” in its place.

The revision reads as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(3) Use the provision at 252.215-7008, Only One Offer, in competitive solicitations that exceed the simplified acquisition threshold, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Amend section 252.215-7008 by—
- a. Removing the provision date “(OCT 2013)” and adding “(DATE)” in its place;
- b. Revising paragraph (a);
- c. Removing paragraphs (b) and (d);
- d. Redesignating paragraph (c) as paragraph (b); and
- e. Adding a new paragraph (c).

The revision and addition read as follows:

252.215-7008 Only One Offer.

* * * * *

(a) After initial submission of offers, if the Contracting Officer notifies the Offeror that only one offer was received, the Offeror agrees to—

(1) Submit any additional cost or pricing data that is required in order to determine whether the price is fair and reasonable or to comply with the statutory requirement for certified cost or pricing data (10 U.S.C. 2306a and FAR 15.403-3); and

(2) Except as provided in paragraph (b) of this provision, if the acquisition

exceeds the certified cost of pricing data threshold and an exception to the requirement for certified cost or pricing data at FAR 15.403-1(b)(2) through (5) does not apply, certify all cost or pricing data in accordance with paragraph (c) of provision 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, of this solicitation.

* * * * *

(c) *Subcontracts.* Unless the Offeror is the Canadian Commercial Corporation, the Offeror shall insert the substance of this provision, including this paragraph (c), in all subcontracts exceeding the simplified acquisition threshold defined in FAR part 2.

(End of provision)

- 5. Amend section 252.215-7010 by—
- a. In the basic provision—
- i. Removing the provision date of “(JAN 2018)” and adding “(DATE)” in its place;
- ii. In paragraph (c), adding new paragraph (3);
- b. In the Alternate I clause—
- i. Removing the provision date of “(JAN 2018)” and adding “(DATE)” in its place; and
- ii. In paragraph (c), adding new paragraph (3).

The additions read as follows:

252.215-7010 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

* * * * *

(c) * * *

(3) The Offeror is responsible for determining whether a subcontractor qualifies for an exception from the requirement for submission of certified cost or pricing data on the basis of adequate price competition, *i.e.* two or more responsible offerors, competing independently, submit responsive and viable offers in accordance with FAR 15.403-1(c)(1)(ii).

* * * * *

Alternate I. * * *

* * * * *

(c) * * *

(3) The Offeror is responsible for determining whether a subcontractor qualifies for an exception from the requirement for submission of certified cost or pricing data on the basis of adequate price competition, *i.e.* two or more responsible offerors, competing independently, submit responsive and viable offers in accordance with FAR 15.403-1(c)(1)(ii).

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BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217 and 252

[Docket DARS-2018-0036]

RIN 0750-AJ87

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause “Surge Option” (DFARS Case 2018-D025)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise a clause to reflect current terminology and industry practices, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 28, 2018, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018-D025, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2018-D025” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2018-D025.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2018-D025” on your attached document.

• *Email:* osd.dfars@mail.mil. Include DFARS Case 2018-D025 in the subject line of the message.

• *Fax:* 571-372-6094.

• *Mail:* Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD (A&S) DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately 2 to 3 days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

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

SUPPLEMENTARY INFORMATION:**I. Background**

This rule proposes to revise the DFARS by modifying DFARS clause 252.217-7001, Surge Option, to replace the term “Production Surge Plan (DI-MGMT-80969)” with “Capabilities Analysis Plan (CAP)” and add text to permit the option increase of supplies or services called for under the clause to be expressed as a specific number. The associated clause prescription at DFARS 217.208-70(b) is proposed to be amended to reflect that the option increase of supplies or services may also be expressed as a specific number.

This clause is incorporated into contracts that support industrial planning for selected essential military items in the event of a national emergency. Currently, the clause advises contractors that the Government has the option to increase the supplies or services delivered under the contract up to a specified percentage or accelerate the rate of delivery. It also instructs contractors to follow the Production Surge Plan (DI MGMT 80969) included in the contract or, if no plan is in the contract, to provide a delivery schedule to the Government within 30 days of contract award. A review of the clause text indicates that it should be modified to reflect current practices in the marketplace.

II. Discussion and Analysis

Paragraphs (b)(1) and (2) of DFARS clause 252.217-7001 include a reference to a Production Surge Plan (DI MGMT 80969). DoD subject matter experts advise that Production Surge Plan (DI MGMT 80969) is no longer an up-to-date reference and that Capabilities Analysis Plan (CAP) is the current terminology used in industrial planning efforts. This rule will update the clause paragraphs to reflect the current industry terminology.

Paragraph (a) of the DFARS clause provides contractors with a maximum quantity of supplies or services by which the Government may increase the contract in order to support a surge need. This quantity is expressed as a percentage of the supplies or services currently being provided for under the contract. Supply chains supporting surge needs more commonly express increases of supplies or services as a specific number of additional supplies or services to be provided under the contract, as opposed to an additional percentage of the supplies or services already being provided under the contract. In order to reflect current supply chain practices, this rule proposes to permit the contracting

officer to express DoD’s surge need as a specific quantity of supplies or services needed, or utilize the existing method of expressing the surge need as a percentage of contracted supplies or services.

The proposed revision to this DFARS clause supports 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. Subsequently, the DoD Task Force reviewed the requirements of DFARS 252.217-7001, Surge Option, and determined that the DFARS coverage should be revised to align with industry practice.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not propose to create any new provisions or clauses. The proposed changes to DFARS clause 252.217-7001, Surge Option, are minimal and reflect only updates required to mirror current industry terminology and practice for support that may be required for industrial planning for selected essential military items in the event of a national emergency. The rule applies to contracts below the SAT, however, the rule does not apply to commercial items and COTS items.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, 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. The Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This rule is not an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to 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 is only updating a term used in the clause and However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise a clause to reflect current terminology and industry practices, pursuant to action taken by the Regulatory Reform Task Force.

The objective of this proposed rule is to improve the flexibility offered to contractors when submitting pricing by giving the option to quote prices by percentage or quantity increases and update the terminology used from “Production Surge Plan” to “Capability Analysis Plan” (CAP). The modification of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force.

This rule is not expected to 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.* Based on fiscal year 2017 data from the Federal Procurement Data System, the Government issued approximately 78 contract actions that cited mobilization as the reason for other than full and open competition for the surge option. Of the 78 total contract actions, approximately 33 awards were made to 24 unique small businesses entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the

proposed rule that would meet the proposed objectives.

VI. 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 217 and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 217 and 252 are proposed to be amended as follows:

- 1. The authority citation for parts 217 and 252 continues to read as follows:

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

PART 217—SPECIAL CONTRACTING METHODS

217.208–70 [Amended]

- 2. In section 217.208–70, amend paragraph (b)(1), by removing “percentage” and adding “percentage or quantity” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 252.217–7001 by—
 - a. Removing the clause date of “(AUG 1992)” and adding “(DATE)” in its place;
 - b. Revising paragraph (a)(1);
 - c. In paragraph (b)(1), removing “Production Surge Plan (DI–MGMT)” and adding “(Capabilities Analysis Plan (CAP))” in its place; and
 - d. In paragraph (b)(2), removing “Production Surge Plan” and adding “CAP” in its place.

The revision reads as follows:

252.217–7001 Surge Option.

* * * * *

(a) * * *

(1) Increase the quantity of supplies or services called for under this contract by no more than ___ percent or ___ [insert quantity and description of services or supplies to be increased]; and/or

* * * * *

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232, 246, 252, and Appendix F to Chapter 2

[Docket DARS–2018–0037]

RIN 0750–AJ44

Defense Federal Acquisition Regulation Supplement: Electronic Submission and Processing of Payment Requests and Receiving Reports (DFARS Case 2016–D032)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify policies and procedures for submission of payment requests and receiving reports in electronic form.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 28, 2018, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2016–D032, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for “DFARS Case 2016–D032.” Select “Comment Now” and follow the instructions provided to submit a comment. Please include “DFARS Case 2016–D032” on any attached documents.

- *Email:* osd.dfars@mail.mil. Include DFARS Case 2016–D032 in the subject line of the message.

- *Fax:* 571–372–6094.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Jennifer D. Johnson, OUSD (A&S) DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately 2 to 3 days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

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

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule clarifies and, where necessary, updates policies and procedures for providing electronic payment-related documents and for processing payment requests and receiving reports in Wide Area WorkFlow (WAWF). Title 10 of the United States Code (U.S.C.), section 2227, Electronic Submission and Processing of Claims for Contract Payments, requires that any claim for payment under a DoD contract be in electronic format. If electronic submission is unduly burdensome, 10 U.S.C. 2227 allows an exemption. DoD published a final rule in the **Federal Register** at 77 FR 38731 on June 29, 2012 (DFARS Case 2011–D027), to update DFARS policies and procedures for electronic submission of payment requests and receiving reports and established WAWF as the accepted DoD system for processing invoices and receiving reports.

Some contractors have been prevented from using WAWF for some contracts because of a misinterpretation of the exemptions in DFARS subpart 232.70, Electronic Submission and Processing of Payment Requests and Receiving Reports. This proposed rule clarifies those exemptions and allows contractors to request permission from the contracting officer, in writing, to submit payment requests and receiving reports using temporary alternative methods, other than in electronic form.

II. Discussion and Analysis

DoD is proposing to amend DFARS parts 232, 246, 252, and Appendix F to clarify and, where necessary, update the policies and procedures for electronic submission of payment requests and receiving reports. The following is a summary of the proposed changes:

- DFARS subpart 232.70, Electronic Submission and Processing of Payment Requests and Receiving Reports. Definitions of the terms “electronic form,” “payment request,” and “receiving report” are inserted in their entirety in lieu of the reference stating that the terms are defined in the clause at DFARS 252.232–7003, Electronic Submission of Payment Requests. The policy on exceptions to submission of payment requests in electronic form is clarified by deleting the current list of exceptions at DFARS 232.7002(a)(ii) and providing a more general exception for cases in which contractor submission of electronic payment requests is not feasible (e.g., when contract performance is in a contingency or austere environment where internet connectivity is not available). This