

TABLE 1 TO PARAGRAPH (a)—
Continued

Commodity	Parts per million
Vegetable, tuberous and corm, subgroup 1C	0.04
Wheat, grain	0.3

- (b) [Reserved]
- (c) [Reserved]
- (d) [Reserved]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

[Docket DARS-2019-0027]

RIN 0750-AK69

Defense Federal Acquisition Regulation Supplement: Annual Representations and Certifications—Alternate A (DFARS Case 2019-D030)

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 correct paragraph references in the DFARS provision on annual representations and certifications and also correct the structure of the prescription for that provision.

DATES: Effective June 28, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the provision at DFARS 252.204-7007, Annual Representations and Certifications—Alternate A, and the prescription for this provision at DFARS 204.1202. DFARS 252.204-7007 provides alternate paragraphs (d) and (e), to replace paragraph (d) of the provision at Federal Acquisition Regulation (FAR) 52.204-8, Annual Representations and Certifications, in order to include DoD-unique representations and certifications.

II. Discussion and Analysis

Paragraph (b) of FAR provision 52.204-8 includes a reference to

paragraph (d) of the FAR provision. When the DFARS alternate is used, this reference to paragraph (d) creates an inconsistency. To correct the inconsistency, this final rule amends DFARS 252.204-7007 to include an alternate to paragraph (b) of FAR 52.204-8 that references paragraph (e) of the DFARS alternate, instead of paragraph (d) of FAR 52.204-8.

In addition, the prescription at DFARS 204.1202(1) is restructured so that the lead-in tying the prescription to the use of FAR 52.204-8 applies to both paragraphs (1) and (2), as originally intended. DFARS 204.1202(1) previously stated that the DFARS provision 252.204-7007 is only used when using FAR 52.204-8, Annual Representations and Certification. FAR 52.204-8 is not used in solicitations for the acquisition of commercial items, so DFARS 252.204-7007 is also not used in solicitations for the acquisition of commercial items. Paragraph (2) of the prescription states that the following provisions listed in 204.1202 do not need to be separately listed in the solicitation, because they are included in the provision at DFARS 252.204-7007. Although this prescription is in part 204, not part 212, and has probably been correctly interpreted to apply only to acquisition of noncommercial items, paragraph (2) could technically be misinterpreted in a way that could lead to an inconsistency. Since DFARS 252.204-7007 only applies to noncommercial acquisitions, the provisions listed in 204.1202 would only be included in the solicitation through inclusion of the provision at DFARS 252.204-7007 when acquiring noncommercial items. By restructuring the prescription, the limitation of paragraph (2) to noncommercial acquisitions is unambiguous.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707 entitled “Publication of Proposed Regulations.” Paragraph (a)(1) of the statute 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 it only makes minor

administrative corrections. These requirements affect only the internal operating procedures of the Government.

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

This rule makes a minor correction to an existing provision at DFARS 252.204-7007, Alternate A, Annual Representations and Certifications, and clarifies the prescription for use of the provision, which applies below the simplified acquisition threshold but does not apply to the acquisition of commercial 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

This final 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 Parts 204 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

■ 2. Amend section 204.1202 by adding introductory text and revising paragraph (1) to read as follows:

204.1202 Solicitation provision.

When using the provision at FAR 52.204–8, Annual Representations and Certifications—

(1) Use the provision with 252.204–7007, Alternate A, Annual Representations and Certifications; and

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.204–7007 by—

■ a. Removing the clause date “(APR 2019)” and adding “(JUN 2019)” in its place;

■ b. Revising the provision introductory text;

■ c. Adding paragraph (b); and

■ d. In paragraph (d)(1) introductory text, removing “System for Award Management (SAM)” and adding “SAM” in its place.

The revision and addition read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

Substitute the following paragraphs (b), (d), and (e) for paragraphs (b) and (d) of the provision at FAR 52.204–8:

(b)(1) If the provision at FAR 52.204–7, System for Award Management, is included in this solicitation, paragraph (e) of this provision applies.

(2) If the provision at FAR 52.204–7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (e) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The

Offeror shall indicate which option applies by checking one of the following boxes:

_____ (i) Paragraph (e) applies.

_____ (ii) Paragraph (e) does not apply and the Offeror has completed the individual representations and certifications in the solicitation.

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 215 and 252**

[Docket DARS–2018–0008]

RIN 0750–AJ19

Defense Federal Acquisition Regulation Supplement: Only One Offer (DFARS Case 2017–D009)

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 partially implement a section of the National Defense Authorization Act for Fiscal Year 2017 that addresses the requirement for additional cost or pricing data when only one offer is received in response to a competitive solicitation.

DATES: Effective July 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD published a proposed rule in the *Federal Register* at 83 FR 30656 on June 29, 2018, to partially implement section 822 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) to: (1) Address the potential requirement for additional cost or pricing data when only one offer is received in response to a competitive solicitation; and (2) make prime contractors responsible for determining whether a subcontract qualifies for an exception from the requirement for submission of certified cost based on adequate price competition. This DFARS rule supplements the Federal Acquisition Regulation (FAR) final rule published under FAR Case 2017–006, which modified the standards for adequate

price competition at FAR 15.403–1(c) for DoD, National Air and Space Administration (NASA), and the Coast Guard (FAC 2019–03, 84 FR 27494). Section 822 excludes from the standard for adequate price competition the situation in which there was an expectation of competition, but only one offer is received. Three respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no significant changes from the proposed rule in the final rule in response to the public comments. However, changes were required at 252.215–7010, in order to conform to changes in the FAR final rule relating to elimination of the terms “responsive” and “viable.”

*B. Analysis of Public Comments***1. Effectiveness and Efficiency of the Acquisition Process**

Comment: Several respondents indicated that the requirement for certification of cost or pricing data and potential submission of additional data when only one offer is received in response to a competitive solicitation would burden the effectiveness and efficiency of the acquisition process and delay timely execution. This may also delay subcontract competitions, requiring restart of the procurement process when only one offer is received for a subcontract.

Response: This rule is implementing the requirements of section 822 of the NDAA for FY 2017. DoD has no flexibility to remove the certification requirement from the rule, since it is required by statute.

2. Competition

Comment: One respondent noted that it is the expectation of offers that produces the competitive environment.

Response: This rule is implementing the requirements of section 822 of the NDAA for FY 2017. The Government cannot project with certainty which solicitations will receive multiple offers or only one offer. Furthermore, even though a solicitation is issued competitively, the Government does not know whether the single offeror expected competition.