

- d. In the Alternate I clause—
- i. Removing clause date “(MAY 2019)” and adding “(DEC 2019)” in its place;
- ii. In paragraph (b), removing “goal” and adding “goal (section 8025 of Pub. L. 108–87)” in its place;
- iii. In paragraph (d), removing “Contractor’s cognizant contract administration activity” and adding “cognizant contract administration activity for the Contractor”; and
- e. Adding Alternate II clause to read as follows:

252.219–7003 Small Business Subcontracting Plan (DoD Contracts).

* * * * *

Alternate II. As prescribed in 219.708(b)(1)(A) and (b)(1)(A)(3), use the following clause, which uses different paragraphs (a) and (b) than the basic clause.

Small Business Subcontracting Plan (DoD Contracts)—Alternate II (Dec 2019)

(a) *Definitions.* As used in this clause—
Eligible contractor means a business entity operated on a for-profit or nonprofit basis that—

(1) Employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over the 12-month period prior to issuance of the solicitation;

(2) Pays not less than the minimum wage prescribed pursuant to 29 U.S.C. 206 to the employees who are severely disabled individuals; and

(3) Provides, for its employees, health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

Summary Subcontract Report (SSR) Coordinator means the individual who is registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense level and is responsible for acknowledging receipt or rejecting SSRs submitted under an individual subcontracting plan in eSRS for the Department of Defense.

(b)(1) Subcontracts awarded to qualified nonprofit agencies designated by the Committee for Purchase From People Who are Blind or Severely Disabled (41 U.S.C. 8502–8504), may be counted toward the Contractor’s small business subcontracting goal (section 8025 of Pub. L. 108–87).

(2) Subcontracts awarded to eligible contractors under the Demonstration Project for Contractors Employing Persons with Disabilities (see Defense Federal Acquisition Regulation Supplement (DFARS) 226.72) may be counted toward the Contractor’s small disadvantaged business subcontracting goal (section 853 of Pub. L. 108–136, as amended by division H, section 110 of Pub. L. 108–199).

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101–510, may count

toward its small disadvantaged business goal, subcontracts awarded to—

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101–510.

(d) The master plan is approved by the cognizant contract administration activity for the Contractor.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) Submit the consolidated SSR for an individual subcontracting plan to the “Department of Defense.”

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (f)(1)(i) of this clause.

(ii) The authority to acknowledge receipt of or reject SSRs submitted under an individual subcontracting plan resides with the SSR Coordinator.

(g) Include the clause at DFARS 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.702–70, if the subcontract is expected to exceed the applicable threshold specified in Federal Acquisition Regulation 19.702(a) and to have further subcontracting opportunities.

(End of clause)

■ 9. Add section 252.226–7002 to read as follows:

252.226–7002 Representation for Demonstration Project for Contractors Employing Persons with Disabilities.

As prescribed in 226.7203, use the following provision:

Representation for Demonstration Project for Contractors Employing Persons With Disabilities (Dec 2019)

(a) *Definitions.* As used in this provision—
Eligible contractor means a business entity operated on a for-profit or nonprofit basis that—

(1) Employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over the 12-month period prior to issuance of the solicitation;

(2) Pays not less than the minimum wage prescribed pursuant to 29 U.S.C. 206 to the employees who are severely disabled individuals; and

(3) Provides, for its employees, health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

Severely disabled individual means an individual with a disability (as defined in 42 U.S.C. 12102) who has a severe physical or mental impairment that seriously limits one or more functional capacities.

(b) *Demonstration Project.* This solicitation is issued pursuant to the Demonstration Project for Contractors Employing Persons with Disabilities. The purpose of the Demonstration Project is to provide defense contracting opportunities for entities that employ severely disabled individuals. To be eligible for award, an offeror must be an eligible contractor as defined in paragraph (a) of this provision.

(c) *Representation.* The offeror represents that it [] is [] is not an eligible contractor as defined in paragraph (a) of this provision.

(End of provision)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219

[Docket DARS–2019–0034]

RIN 0750–AK43

Defense Federal Acquisition Regulation Supplement: Review of Defense Solicitations by Procurement Center Representatives (DFARS Case 2019–D008)

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 2017 that provides limits on the scope of review by the Small Business Administration’s procurement center representatives for certain solicitations awarded by or for DoD.

DATES: Effective December 31, 2019.

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 39256 on

August 9, 2019, to implement section 1811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) and the Small Business Administration (SBA) proposed rule published in the **Federal Register** on December 4, 2018, at 83 FR 62516. Section 1811 limits the scope of review of DoD solicitations by SBA procurement center representatives. Additionally, section 1811 excludes these procurements from DoD's small business goals.

This final DFARS rule informs contracting officers that SBA procurement center representatives will not review acquisitions conducted by or for DoD, unless the contracting activity requests a review, if the acquisition is—

- For foreign military sales (see DFARS 225.7300);
- In support of humanitarian and civic assistance;
- In support of a contingency operation;
- Awarded pursuant to a Status of Forces Agreement or other agreement with the government of a foreign country in which U.S. Armed Forces are deployed; or
- Both awarded and performed outside the United States and its outlying areas.

SBA's final rule, published in the **Federal Register** on November 29, 2019, at 84 FR 65647, states that, unless the contracting agency requests a review, procurement center representatives will not review such procurements.

There were no public comments submitted in response to the proposed rule. The final rule includes a minor change to the paragraph numbers in DFARS 219.502–1.

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 any new provisions or clauses or impact any existing provisions or clauses.

III. 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.

IV. 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.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule revises the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) and the SBA final rule published in the **Federal Register** on November 29, 2019, at 84 FR 65647. Specifically, the rule informs contracting officers that SBA procurement center representatives will not review acquisitions conducted by or for DoD, unless the contracting activity requests a review, if the acquisition is—

- For foreign military sales (see DFARS 225.7300);
- In support of humanitarian and civic assistance;
- In support of a contingency operation;
- Awarded pursuant to a Status of Forces Agreement or other agreement with the government of a foreign country in which U.S. Armed Forces are deployed; or
- Both awarded and performed outside the United States and its outlying areas.

In addition, section 1811 of the NDAA for FY 2017 excludes these procurements from DoD's small business goals.

This rule is necessary to implement section 1811 of the NDAA for FY 2017. The objective of this rule is to implement, in the DFARS, the limits provided in section 1811 on the scope of review by SBA procurement center representatives.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule may impact small entities that are interested in performing the types of DoD contracts listed in section 1811 of the NDAA for FY 2017.

According to the Federal Procurement Data System (FPDS), DoD awarded an average of 12,658 contracts and orders for performance outside the United States to approximately 1,292 unique

small entities per year in FY 2016, 2017, and 2018. Approximately 4 percent of those small entities received awards for foreign military sales. About 8 percent received awards in support of a contingency operation. Approximately 81 percent received awards made pursuant to an agreement such as a Status of Forces Agreement.

FPDS does not currently collect data on the type of humanitarian operation identified in section 1811 (*i.e.*, humanitarian and civic assistance), which is very different from the “humanitarian or peacekeeping” operation defined in Federal Acquisition Regulation (FAR) 2.101 and used in the DFARS. FPDS does collect data on humanitarian or peacekeeping operations, as defined in FAR 2.101. FPDS shows that about 1 percent of the small entities performing contracts or orders outside the United States received awards for humanitarian or peacekeeping operations. The data collected may provide some indication of the number of small entities that could perform contracts or orders for the type of humanitarian operation identified in section 1811.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known, significant alternatives that would meet the requirements of the applicable statute.

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 Part 219

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 is amended as follows:

PART 219—SMALL BUSINESS PROGRAMS

- 1. The authority citation for 48 CFR part 219 continues to read as follows:

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

- 2. Add section 219.402 to subpart 219.4 to read as follows:

219.402 Small Business Administration procurement center representatives.

(c)(i) *Authority.* This section implements section 1811 of the National

Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328).

(ii) *Definition.* As used in this section—

Humanitarian and civic assistance means any of the following activities carried out in conjunction with authorized military operations in a foreign country:

(A) Medical, surgical, dental, and veterinary care provided in areas of a country that are rural or underserved by professionals in those fields, including education, training, and technical assistance related to the care provided.

(B) Construction of rudimentary surface transportation systems.

(C) Well drilling and construction of basic sanitation facilities.

(D) Rudimentary construction and repair of public facilities. (10 U.S.C. 401(e))

(iii) *Exclusions.* Unless the contracting activity requests a review, SBA procurement center representatives will not review acquisitions conducted by or for DoD if the acquisition is—

(A) For foreign military sales (see 225.7300);

(B) In support of humanitarian and civic assistance;

(C) In support of a contingency operation;

(D) Awarded pursuant to a Status of Forces Agreement or other agreement with the government of a foreign country in which U.S. Armed Forces are deployed; or

(E) Both awarded and performed outside the United States and its outlying areas.

■ 3. Revise section 219.502-1 to read as follows:

219.502-1 Requirements for setting aside acquisitions.

Do not set aside acquisitions—

(1) For supplies that were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program; or

(2) Excluded from procurement center representative review (see 219.402(c)(iii)).

[FR Doc. 2019-27827 Filed 12-30-19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

48 CFR Parts 204, 215, and 252

[Docket DARS-2019-0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

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

ACTION: Final rule.

SUMMARY: DoD is making needed technical amendments to update the Defense Federal Acquisition Regulation Supplement (DFARS).

DATES: Effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD (A&S) DPC (DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6115; facsimile 571-372-6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. DFARS sections 204.7001 and 215.404-1 are amended to add a notice to contracting officers to see DFARS Procedures, Guidance, and Information (PGI) 204.7001 and PGI 215.404-1(h) for guidance regarding entering procurement acquisition lead time milestones into the Procurement Integrated Enterprise Environment module and for reviewing and justifying pass-through contracts, respectively.

2. Internet hyperlinks are updated in DFARS clauses 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting; 252.211-7006, Passive Radio Frequency Identification; and 252.235-7011, Final Scientific or Technical Report.

List of Subjects in 48 CFR Parts 204, 215, and 252

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 215, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 215, and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Add new subpart 204.70, consisting of section 204.7001, to read as follows:

Subpart 204.70—Procurement Acquisition Lead Time

Sec.
204.7001 Procedures.

Subpart 204.70—Procurement Acquisition Lead Time

204.7001 Procedures.

Follow the procedures at PGI 204.7001 for reporting procurement acquisition lead time milestones in the Procurement Integrated Enterprise Environment module.

PART 215—CONTRACTING BY NEGOTIATION

■ 3. Amend section 215.404-1 by adding paragraph (h) to read as follows:

215.404-1 Proposal analysis techniques.
* * * * *

(h) *Review and justification of pass-through contracts.* Follow the procedures at PGI 215.404-1(h)(2) when considering alternative approaches or making the determination that the contracting approach selected is in the best interest of the Government, as required by FAR 15.404-1(h)(2).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204-7012 [Amended]

■ 4. Amend section 252.204-7012 by—
■ a. Removing the clause date “(OCT 2016)” and adding “(DEC 2019)” in its place; and
■ b. In paragraphs (c)(1)(ii) and (c)(2), removing “<http://dibnet.dod.mil>” and adding “<https://dibnet.dod.mil>” in both places; and
■ c. In paragraph (c)(3), removing “<http://iase.disa.mil/pki/eca/Pages/index.aspx>” and adding “<https://public.cyber.mil/eca/>” in its place.
* * * * *

252.211-7006 [Amended]

■ 5. Amend section 252.211-7006 by—
■ a. Removing the clause date “(MAR 2016)” and adding “(DEC 2019)” in its place; and
■ b. In paragraph (d), removing “<http://www.epcglobalinc.org/standards/>” and adding “<http://www.gs1.org/epc-rfid>” in its place.
* * * * *

252.235-7011 [Amended]

■ 6. Amend section 252.235-7011 by—