

receiving the appeal, an applicant may electronically submit a withdrawal of the pending appeal simultaneously to the recipient, the FEMA Regional Administrator, and the CBCA. The applicant may then submit a request for arbitration within 30 calendar days from the date of the withdrawal of the pending appeal.

(C) *Content of request.* The request for arbitration must contain a written statement that specifies the amount in dispute, all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel.

(iv) *Expenses.* Expenses for each party will be paid by the party who incurred the expense.

(v) *Guidance.* FEMA may issue separate guidance as necessary to supplement paragraph (b)(3) of this section.

(c) *Finality of decision.* A FEMA final agency determination or a decision of the Assistant Administrator for the Recovery Directorate on a second appeal constitute a final decision of FEMA. In the alternative, a decision of the majority of the CBCA panel constitutes a final decision, binding on all parties. See 48 CFR 6106.613. Final decisions are not subject to further administrative review.

**Pete Gaynor,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2020-16040 Filed 8-28-20; 8:45 am]

BILLING CODE 9111-19-P

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

48 CFR Parts 204, 209, 212, 213, and 252

[Docket 2020-0027]

RIN 0750-AK44

### Defense Federal Acquisition Regulation Supplement: Use of Supplier Performance Risk System (SPRS) Assessments (DFARS Case 2019-D009)

**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 update the policy and procedures for

use of the Supplier Performance Risk System.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before October 30, 2020, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2019-D009, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Search for "DFARS Case 2019-D009." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2019-D009" on any attached document.
- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2019-D009 in the subject line of the message.
- *Fax:* 571-372-6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Heather Kitchens, OUSD(A&S)DPC/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](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Heather Kitchens, telephone 571-372-6095.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

The Supplier Performance Risk System (SPRS) is a DoD enterprise application that retrieves quality and delivery data from Government systems to calculate "on time" delivery scores and quality classifications. Contracting officers will use the overall risk assessment generated by the SPRS module to evaluate quotes and offers received under all solicitations for supplies and services, including solicitations using part 12 procedures for the acquisition of commercial items. The system generates three risk assessments using the SPRS Evaluation Criteria and calculations at [https://www.sprs.csd.disa.mil/pdf/SPRS\\_DataEvaluationCriteria.pdf](https://www.sprs.csd.disa.mil/pdf/SPRS_DataEvaluationCriteria.pdf). These risk assessments are described as follows:

- *Item Risk.* SPRS collects data to generate the probability that a product or service, based on intended use, will introduce counterfeit or nonconforming material entering the DoD supply chain, which can result in significant personnel safety issues, mission

degradation, or monetary loss. SPRS "flags" items identified by Government sources as "high risk" and provides suggested mitigations, or as "not high risk".

- *Price Risk.* SPRS collects historical pricing data from Government sources and applies a common statistical method to calculate the average price paid for a product or services, generating a price range that contracting officers can use in the evaluation of fair and reasonable pricing. Price Risk determines whether "a proposed price is consistent with historical prices paid for that item and is depicted by high, low, or within range".

- *Supplier Risk.* SPRS calculates a supplier risk score, for contracting officers to compare competing suppliers. This score includes three years of relevant supplier performance information from existing Government data sources.

#### II. Discussion and Analysis

The proposed rule amends the DFARS to: (1) Move coverage of the Supplier Performance Risk System (SPRS) from part 213, Simplified Acquisition Procedures, to a new subpart 204.7X, Supplier Performance Risk System; and (2) replace DFARS clause 252.213-7000, Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Past Performance Evaluations, with DFARS provision 252.204-70XX, Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Performance Evaluations, to enhance the use of SPRS in the evaluation of a supplier's performance through the introduction of SPRS system-generated item, price, and supplier risk assessments.

In the new subpart, at 204.7X01, definitions are added for item, price, and supplier risk. Section 204.7X02, Applicability, provides that the use of SPRS is required to be used to evaluate quotes and offers in response to all solicitations for supplies and services, including solicitations using FAR part 12 procedures for the acquisition of commercial items. Language is added at 204.7X03, Procedures, to provide guidance to the contracting officer on how SPRS risk assessments shall be considered during award decisions, how to respond to risk assessment ratings, and what mitigating strategies shall be considered for risk assessments prior to award. A prescription for use of the new solicitation provision at 252.204-70XX is added at 204.7X04.

The proposed rule amends the DFARS by requiring contracting officers to use the supplier risk assessments available in SPRS as a factor in determining

responsibility at DFARS 209.105–1, as required by 204.7X03(c)(1). The supplier risk assessment reduces supply chain risk as it highlights for the contracting officer the probability that an award made to a supplier may subject the procurement to the risk of unsuccessful performance or to supply chain risk.

At DFARS 212.301(f), the newly proposed provision, 252.204–70XX, Notice to Prospective Suppliers on Use of the Supplier Performance Risk System in Performance Evaluations, is added to the list of clauses and provisions applicable to FAR part 12 acquisitions. DFARS provision 252.213–7000, which is superseded by 252.204–70XX, is removed from the list.

DFARS 213.106–2, Evaluation of quotations or offers, is amended to provide a cross-reference to subpart 204.7X, and expanded to require that SPRS data is used for evaluation of a supplier quote or offer for all solicitations for supplies and services, including solicitations using FAR part 12 procedures for the acquisition of commercial items. Previously, use of SPRS was limited to competitive acquisitions using simplified acquisition procedures that were valued at less than or equal to \$1 million under the authority at FAR subpart 13.5. The language is amended to require the contracting officer to evaluate suppliers using all SPRS data, not just past performance data. The text is also amended to require that the basis for award will be based on an overall risk assessment, if applicable. A cross-reference is added to see 204.7X04 for use of the 252.204–70XX provision, while DFARS 213.106–2–70 is removed, since DFARS provision 252.213–7000 is being removed.

The new solicitation provision at DFARS 252.204–70XX, Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Performance Evaluations, provides the definitions of the SPRS risk assessments for item, price, and supplier risk; provides a notice that SPRS will be used in the evaluation of suppliers' performance and adds a link to the SPRS web page; addresses how the SPRS risk assessments will be used by the contracting officer to evaluate quotes or offers received in response to the solicitation; and provides links to the SPRS User's Guide and SPRS evaluation criteria.

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

This rule is applicable to all solicitations for supplies and services, including solicitations using FAR part 12 procedures for the acquisition of commercial items. The rule proposes to add DFARS provision 252.204–70XX, Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Performance Evaluations, to replace DFARS provision 252.213–7000, Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Past Performance Evaluations. The new provision provides notice to potential offerors that the overall risk assessment generated by the SPRS module will be used to evaluate quotes or offers received in response to the solicitation.

### **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 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**

The DoD does not expect this 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 proposed changes made to existing DFARS text and provision merely reflect existing DoD practice, procedures, and systems used by DoD, *i.e.*, the Supplier Performance Risk System in Performance Evaluations (SPRS). However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to revise the Defense Federal Acquisition Regulation Supplement to incorporate the expanded capabilities of SPRS, made possible by recent technical enhancements. SPRS is a DoD enterprise application that retrieves quality and delivery information performance data obtained from Government reporting systems. The system provides three risk assessments for contracting officer use in evaluations: Item, price, and supplier risk assessments.

The objective of the proposed rule is to notify offerors that SPRS collects performance data from a variety of Government sources on awarded contracts, to develop item, price, and supplier risk assessments for contracting officer use during evaluation of quotations or offers. The proposed rule also requires contracting officers to use the supplier risk assessment as a factor in the evaluation of contractor responsibility. The legal basis for the rule is covered under 41 U.S.C 1707, Office of Federal Procurement Policy statute.

The Federal Procurement Data System indicates that in FY17–FY19, DoD awarded 198,038 contracts (both products and services), of which 123,217 were awarded to small businesses (approximately 62%). DoD does not expect small entities will be materially affected by this rule.

The rule does not impose any additional reporting, recordkeeping, and other compliance requirements.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternatives to the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2019–D009), in correspondence.

### **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 204, 209, 212, 213, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 209, 212, 213, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 209, 212, 213, 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 subpart 204.7X to read as follows:

##### SUBPART 204.7X—Supplier Performance Risk System

Sec.

204.7X00	Scope of subpart.
204.7X01	Definitions.
204.7X02	Applicability.
204.7X03	Procedures.
204.7X04	Solicitation provision.

##### SUBPART 204.7X—Supplier Performance Risk System

###### 204.7X00 Scope of subpart.

This subpart provides policies and procedures for use of the Supplier Performance Risk System (SPRS) risk assessments in the evaluation of a supplier's quotation or offer.

###### 204.7X01 Definitions.

As used in this subpart—

*Item risk* means the probability that a product or service, based on intended use, will introduce performance risk resulting in safety issues, mission degradation, or monetary loss.

*Price risk* means the measure of whether a proposed price for a product or service is consistent with historical prices paid for that item or service.

*Supplier risk* means the probability that an award made to a supplier may subject the procurement to the risk of unsuccessful performance or to supply chain risk (see 239.7301).

###### 204.7X02 Applicability.

Use of SPRS assessments is required for acquisitions using FAR part 13 simplified acquisition procedures, including solicitations for supplies and services using FAR part 12 procedures for the acquisition of commercial items. SPRS retrieves item, price, quality, delivery, and supplier information on contracts from Government reporting systems in order to develop overall risk assessments of suppliers. SPRS is available at <https://www.sprs.csd.disa.mil>, and the SPRS user's guides are available at <https://www.sprs.csd.disa.mil/reference.htmf>.

[www.sprs.csd.disa.mil](https://www.sprs.csd.disa.mil), and the SPRS user's guides are available at <https://www.sprs.csd.disa.mil/reference.htmf>.

###### 204.7X03 Procedures.

The contracting officer shall ensure the basis for award includes an evaluation of each supplier's overall risk assessment in SPRS, if applicable. Suppliers without an overall risk assessment in SPRS shall not be evaluated favorably or unfavorably under the risk assessment factor. Contracting officers shall use information available in SPRS on item risk, price risk, and supplier risk as follows:

(a) *Item risk.* (1) Item risk shall be considered to determine whether the procurement of products or services represents a high performance risk to the Government. Item risk is displayed in SPRS with the reason(s) an item is identified as high risk.

(2) Before issuing a solicitation and when evaluating quotations or offers, the contracting officer shall access the SPRS item risk report and review any warnings provided. If there are item risk warnings, the contracting officer shall consider strategies to mitigate risk, such as the following:

(i) Consulting with the program office.

(ii) Including mitigating requirements in the statement of work, as provided by the requiring activity.

(iii) Applying risk mitigation strategies, including FAR and DFARS clauses identified in the SPRS application, as appropriate.

(b) *Price risk.* (1) Price ratings shall be considered as part of determining if a proposed price is consistent with historical prices paid for an item or otherwise creates a risk to the Government.

(2) The contracting officer shall consider strategies to mitigate price risk, such as the following—

(i) Not awarding to suppliers with high price ratings unless there is a way to justify the price through price analysis;

(ii) Utilizing appropriate price negotiation techniques and procedures; and

(iii) Using price reasonableness or price realism techniques at FAR 13.106 or FAR 15.4 when making award decisions.

(c) *Supplier risk.* (1) The contracting officers shall consider supplier risk during the evaluation of a supplier's performance history, to assess the risk of unsuccessful performance, in award decisions. Supplier risk assessments in SPRS include quality, delivery, and other supplier performance information.

(2) See risk mitigation strategies in paragraphs (a)(2) and (b)(2) of this section.

###### 204.7X04 Solicitation provision.

Use the provision at 252.204–70XX, Notice to Prospective Suppliers on the Use of the Supplier Performance Risk System in Performance Evaluations, in solicitations for supplies and services, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

#### PART 209—CONTRACTOR QUALIFICATIONS

■ 3. Amend section 209.105–1 by adding paragraph (3) to read as follows:

##### 209.105–1 Obtaining information.

\* \* \* \* \*

(3) Contracting officers shall use the supplier risk assessment available in the Supplier Performance Risk System (SPRS) at <https://www.sprs.csd.disa.mil> as a factor in determining responsibility. See 204.7X03(c)(1).

#### PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 212.301 by—

- a. Adding paragraph (f)(ii)(K);
- b. Removing paragraph (f)(v); and
- c. Redesignating paragraphs (f)(vi) through (xix) as paragraphs (f)(v) through (xviii).

The addition reads as follows:

##### 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

\* \* \* \* \*

(f) \* \* \*

(ii) \* \* \*

(K) Use the provision at 252.204–70XX, Notice to Prospective Suppliers on Use of the Supplier Performance Risk System in Performance Evaluations, as prescribed in 204.7X04.

\* \* \* \* \*

#### PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 5. Revise section 213.106–2 to read as follows:

##### 213.106–2 Evaluation of quotations or offers.

(b)(i) For solicitations for supplies and services using FAR part 13 simplified acquisition procedures, including solicitations using FAR part 12 procedures for the acquisition of commercial items, the contracting officer shall ensure—

(A) Supplier Performance Risk System (SPRS) assessments are used for evaluation of a supplier's quotation or

offer. See subpart 204.7X. SPRS is available at <https://www.sprs.csd.disa.mil>, and the SPRS user's guides are available at <https://www.sprs.csd.disa.mil/reference.htm>;

(B) The basis for award shall include an evaluation of each supplier's overall risk assessment in SPRS, if applicable; and

(C) Suppliers without a risk assessment in SPRS are not evaluated favorably or unfavorably under the risk assessment factor.

(D) See 204.7X04 for use of the provision at 252.204-70XX, Notice to Prospective Suppliers on the Use of the Supplier Performance Risk System in Performance Evaluations.

#### 213.106-2-70 [Removed]

■ 6. Remove section 213.106-2-70.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Add section 252.204-70XX to read as follows:

#### 252.204-70XX Notice to Prospective Suppliers on Use of the Supplier Performance Risk System in Performance Evaluations.

As prescribed in 204.7X04, use the following provision: NOTICE TO PROSPECTIVE SUPPLIERS ON USE OF THE SUPPLIER PERFORMANCE RISK SYSTEM IN PERFORMANCE EVALUATIONS (DATE)

(a) *Definitions.* As used in this provision—  
*Item risk* means the probability that a product or service, based on intended use, will introduce performance risk resulting in safety issues, mission degradation, or monetary loss.

*Price risk* means a measure of whether a proposed price for a product or service is consistent with historical prices paid for that item or service.

*Supplier risk* means the probability that an award made to a supplier may subject the procurement to the risk of unsuccessful performance or to supply chain risk (see Defense Federal Acquisition Regulation Supplement 239.7301).

(b) The Supplier Performance Risk System (SPRS), available at <https://www.sprs.csd.disa.mil>, will be used in the evaluation of suppliers' performance for acquisitions using Federal Acquisition Regulation (FAR) part 13 simplified acquisition procedures, including solicitations using FAR part 12 procedures for the acquisition of commercial items. SPRS retrieves item, price, quality, delivery, and supplier information on contracts from Government reporting systems in order to develop overall risk assessments.

(c) SPRS risk assessments will be used by the Contracting Officer during the evaluation of quotations or offers received in response to this solicitation as follows:

(1) Item risk shall be considered to determine whether the procurement

represents a high performance risk to the Government.

(2) Price risk shall be considered as part of determining if a proposed price is consistent with historical prices paid for an item or otherwise creates a risk to the Government.

(3) Supplier risk, including but not limited to quality and delivery, shall be considered during the evaluation of a supplier's performance history to assess the risk of unsuccessful performance and supply chain risk.

(d) SPRS risk assessments are generated daily for each supplier. Suppliers are able to access their risk assessment by following the access instructions in the SPRS user's guide available at <https://www.sprs.csd.disa.mil/reference.htm>. Suppliers are granted access to SPRS for their own risk assessment classifications only. SPRS reporting procedures and risk assessment methodology are detailed in the SPRS user's guide. The method to challenge a rating generated by SPRS is also provided in the user's guide. SPRS evaluation criteria are available from the reference at [https://www.sprs.csd.disa.mil/pdf/SPRS\\_DataEvaluationCriteria.pdf](https://www.sprs.csd.disa.mil/pdf/SPRS_DataEvaluationCriteria.pdf).

(e) The Contracting Officer may consider any other available and relevant information when evaluating a quotation or an offer.

(End of provision)

#### 252.213-7000 [Removed]

■ 8. Remove section 252.213-7000.

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BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 212, 225, and 252

[Docket DARS-2020-0031]

RIN 0750-AK97

#### Defense Federal Acquisition Regulation Supplement: Prohibition on Contracting With Persons That Have Business Operations With the Maduro Regime (DFARS Case 2020-D010)

**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 implement a statute that prohibits the Department of Defense from entering into contracts for the procurement of goods and services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the United States Government.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before October 30, 2020, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2020-D010, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Search for "DFARS Case 2020-D010" under the heading "Enter keyword or ID" and selecting "Search." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2020-D010" on any attached documents.
- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2020-D010 in the subject line of the message.
- *Fax:* 571-372-6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Bass, OUSD(A&S)DPC/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](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly Bass, telephone 571-372-6174.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to amend the DFARS, to implement section 890 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92). Section 890 prohibits contracts for the procurement of goods and services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the United States Government, subject to exceptions.

##### II. Discussion and Analysis

This rule proposes to add section DFARS 225.7019, Prohibition on Contracting with the Maduro Regime. This section provides to contracting officers a new solicitation provision and contract clause for use in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, unless an exception applies.