office. The Defense Contract Management Agency (DCMA) performs approximately 128 CPSRs per year. In addition, the contract administration office validates about 256 purchasing systems per year. There is also a quality management system audit of the purchasing system, which is performed on a risk-based basis at least once every three years. There are approximately 3,292 higher-level quality contractors, resulting in 1,097 possible reviews per year. Adding the purchasing system reviews and the quality management system audits totals 1,481 reviews (128 + 256 + 1097). However, DCMA estimates that it is likely that contractors using ''contractor-approved'' sources, would be limited to 10 percent or less of the contractors subject to these audits and reviews, *i.e.* not more than 148 contractors. DCMA further estimates that of those using ''contractor-approved'' sources, not more than 15 (10 percent) per year would result in issues or disapprovals by the Government.

This rule does not impose any reporting, recordkeeping, or other compliance requirements other than being subject to approval by DoD if the contractor or subcontractor identifies a contractor-approved supplier of electronic parts and the Government selects the contractor for review and audit. Since contractor selection of contractor-approved sources was already subject of review and audit, addition of ''and approval'' does not change much, because if the Government reviewed and audited a source and found a serious problem, the Government would require corrective action to prevent entry of such electronic parts into the supply chain. Furthermore, the contractor may proceed with the acquisition of electronic parts from a contractor-approved supplier unless otherwise notified by DoD.

DoD was unable to identify any significant alternatives that would reduce the economic impact on small entities and still fulfill the requirements of the statute. However, DoD does not expect this rule to have any significant economic impact on small entities, because it does not impose any new requirements on contractors or subcontractors. Contractors may proceed with the acquisition of electronic parts from a contractor-approved supplier unless otherwise notified by DoD.

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 212, 246, and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 246, and 252 are amended as follows:

■ 1. The authority citation for parts 212, 246, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

■ 2. In section 212.301, amend paragraph (f)(xix)(C) by removing ''(Pub. L. 113–291)'' and adding ''(Pub. L. 113–291 and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92))'' in its place.

PART 246—QUALITY ASSURANCE

246.870–0 [Amended]

■ 3. Amend section 246.870–0, by removing ''(Pub. L. 113–291)'' and adding ''(Pub. L. 113–291 and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92))'' in its place.

■ 4. In section 246.870–2, revise paragraph (a)(1)(ii)(C) to read as follows:

246.870–2 Policy.

(a) * * *

(1) * * *

(ii) * * *

(C) The selection of such contractor-approved suppliers is subject to review, audit, and approval by the Government, generally in conjunction with a contractor purchasing system review or other surveillance of purchasing practices by the contract administration office, or if the Government obtains credible evidence that a contractor-approved supplier has provided counterfeit parts. The contractor may proceed with the acquisition of electronic parts from a contractor-approved supplier unless otherwise notified by DoD.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.246–7008 by—

■ a. Removing the clause date ''(DEC 2017)'' and adding ''(MAY 2018)'' in its place;

■ b. In paragraph (b) introductory text, removing ''(Pub. L. 113–291)'' and adding ''(Pub. L. 113–291 and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92))'' in its place; and

■ c. Revising paragraph (b)(2)(iii).

The revision reads as follows:

252.246–7008 Sources of Electronic Parts.

* * * * *

(b) * * *

(2) * * *

(iii) The Contractor's selection of such contractor-approved suppliers is subject to review, audit, and approval by the Government, generally in conjunction with a contractor purchasing system review or other surveillance of purchasing practices by the contract administration office, or if the Government obtains credible evidence that a contractor-approved supplier has provided counterfeit parts. The Contractor may proceed with the acquisition of electronic parts from a contractor-approved supplier unless otherwise notified by DoD; or

* * * * *

[FR Doc. 2018–09491 Filed 5–3–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

[Docket DARS–2015–0051]

RIN 0750–AI75

Defense Federal Acquisition Regulation Supplement: Promoting Voluntary Post-Award Disclosure of Defective Pricing (DFARS Case 2015–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 state that, in the interest of promoting voluntary contractor disclosures of defective pricing identified by the contractor after contract award, DoD contracting officers have discretion to request a limited-scope or full-scope audit, as appropriate for the circumstances.

DATES: Effective May 4, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, telephone 571–372–6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 80 FR 72669 on November 20, 2015, to amend the DFARS to indicate that DoD contracting officers have discretion to request a limited- or full-scope audit, as appropriate for the circumstances, when contractors voluntarily disclose defective pricing after contract award. In response to the Better Buying Power 2.0 initiative on ''Eliminating Requirements Imposed on Industry where Costs Outweigh Benefits,'' contractors recommended several changes to 41 U.S.C. chapter 35, Truthful Cost or Pricing Data (formerly the Truth in Negotiations Act) and to the related DFARS guidance. Specifically, contractors recommended that DoD clarify policy guidance to reduce repeated submissions of certified cost or pricing data. Frequent submissions of such data are used as a defense against defective pricing claims by DoD after contract award, since data that are frequently updated are less likely to be considered outdated or inaccurate and, therefore, defective. Better Buying Power 3.0 called for a revision of regulatory guidance regarding the requirement for contracting officers to request an audit even if a contractor voluntarily discloses defective pricing after contract award.

One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment and changes made to the rule as a result of the comment is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

One change was made to the rule as a result of the public comment to remove the mandatory requirement to conduct an audit in all cases of a contractor's voluntary disclosure of defective pricing.

B. Analysis of Public Comment

Comment: The respondent recommended that ''shall'' be replaced by the word ''may'' concerning the requirement to request a limited-scope audit as proposed at DFARS 215.407–1(c)(i). The respondent stated that the study entitled ''Eliminating Requirements Imposed on Industry where Costs Outweigh Benefits'' recommended that DoD not impose a mandatory requirement on itself to conduct an audit in all cases of a contractor's voluntary disclosure of defective pricing, because such a mandatory requirement provides no discretion for contracting officers not to request an audit if in their judgment an audit is not required by the circumstances. However, instead of removing this mandatory requirement as recommended by the study, the proposed rule would change the DFARS from ''shall request an audit. . .'' to ''shall request a limited scope audit. . . .'' Thus, the proposed language still provides a strong disincentive to contractors to voluntarily disclose defective pricing and it still imposes a mandatory requirement on contracting officers that may not be in the best interests of the DoD in all circumstances.

Response: The final rule is revised to remove the mandatory requirement to conduct an audit in all cases of a contractor's voluntary disclosure of defective pricing. However, in order to calculate appropriate price reductions as required by 10 U.S.C. 2306a(e), it is necessary that contracting officers, at a minimum, discuss the disclosure with the Defense Contract Audit Agency (DCAA) to determine the completeness of the contractor's voluntary disclosure and the accuracy of the contractor's cost impact calculation for the affected contract, and the potential impact on existing contracts, task or delivery orders, or other proposals the contractor has submitted to the Government. This discussion will assist the contracting officer in determining the involvement of DCAA, which could be a limited-scope audit (*e.g.,* limited to the affected cost elements of the defective pricing disclosure), a full-scope audit, or technical assistance, as appropriate for the circumstances (*e.g.,* nature or dollar amount of the defective pricing disclosure).

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

The requirement for submission of certified cost or pricing data does not apply to contracts at or below the simplified acquisition threshold or to commercial items, including commercially available off-the-shelf items. Therefore, this rule is not applicable to those classes of contracts.

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

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 691, *et seq.* The FRFA is summarized as follows:

The objective of this rule is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to indicate that, in the interest of promoting voluntary contractor disclosures of defective pricing identified by the contractor after contract award, DoD contracting officers have discretion to request a limited-scope or full-scope audit, as appropriate for the circumstances. This rule will apply to all DoD contractors, including small entities, who are required to submit certified cost or pricing data.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

The number of small entities affected by this rule is unknown as this information is not available in the Federal Procurement Data System or other central repository. However, DoD anticipates that this rule could have a positive economic impact. If those small entities usually submit cost or pricing data frequently in order to avoid defective pricing claims, then this rule may encourage them to reduce the number of such submissions.

There is no change to reporting or recordkeeping as a result of this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules,

and there are no known significant alternative approaches to the rule that would meet the requirements.

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 Part 215

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR part 215 is amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for part 215 continues to read as follows:

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

■ 2. Add sections 215.407 and 215.407–1 to subpart 215.4 to read as follows:

215.407 Special cost or pricing areas.

215.407–1 Defective certified cost or pricing data.

(c)(i) When a contractor voluntarily discloses defective pricing after contract award, the contracting officer shall discuss the disclosure with the Defense Contract Audit Agency (DCAA). This discussion will assist in the contracting officer determining the involvement of DCAA, which could be a limited-scope audit (*e.g.,* limited to the affected cost elements of the defective pricing disclosure), a full-scope audit, or technical assistance as appropriate for the circumstances (*e.g.,* nature or dollar amount of the defective pricing disclosure). At a minimum, the contracting officer shall discuss with DCAA the following:

(A) Completeness of the contractor's voluntary disclosure on the affected contract.

(B) Accuracy of the contractor's cost impact calculation for the affected contract.

(C) Potential impact on existing contracts, task or deliver orders, or other proposals the contractor has submitted to the Government.

(ii) Voluntary disclosure of defective pricing is not a voluntary refund as defined in 242.7100 and does not waive the Government entitlement to the recovery of any overpayment plus interest on the overpayments in accordance with FAR 15.407–1(b)(7).

(iii) Voluntary disclosure of defective pricing does not waive the Government's rights to pursue defective pricing claims on the affected contract or any other Government contract.

[FR Doc. 2018–09489 Filed 5–3–18; 8:45 am]

BILLING CODE 5001–06–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1040

[Docket No. EP 726]

On-Time Performance Under Section 213 of The Passenger Rail Investment and Improvement Act of 2008

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing its final rule concerning on-time performance of intercity passenger rail service because it was invalidated upon judicial review.

DATE: This final rule is effective May 4, 2018.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman: (202) 245–0386. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: On May 15, 2015, the Board instituted a rulemaking proceeding in this docket to define ''on-time performance'' for intercity passenger trains for purposes of Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), 49 U.S.C. 24308(f). *See* 80 FR 28928. The Board adopted its final rule in 49 CFR part 1040 on July 28, 2016, and the rule took effect on August 27, 2016. *See* 81 FR 51343.

Petitions for judicial review of the final rule were filed in the U.S. Courts of Appeals for the Eighth Circuit and the District of Columbia Circuit, and were ultimately consolidated in the Eighth Circuit. The Court of Appeals found that the Board lacked authority to promulgate a final rule defining on-time performance under PRIIA and vacated the Board's rule. *See Union Pac. R.R.* v. *Surface Transp. Bd.,* 863 F.3d 816 (8th Cir. 2017). The National Railroad Passenger Corporation (Amtrak) and certain passenger organizations filed petitions for certiorari with the U.S. Supreme Court, which declined to review the Eighth Circuit's ruling.

The Board's rule is therefore invalid and 49 CFR part 1040 will be removed. Because this action is based on a final court determination that the rule being eliminated is invalid, the Board finds good cause to dispense with notice and comment under the Administrative Procedure Act (APA). *See* 5 U.S.C. 553(b)(B).

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 49 CFR Part 1040

Mass transportation, Railroads.

It is ordered:

1. Part 1040 is removed and notice will be published in the **Federal Register**.

2. This decision is effective on May 4, 2018.

Decided: April 30, 2018.

By the Board, Board Members Begeman and Miller.

Jeffrey Herzig,

Clearance Clerk.

PART 1040 [REMOVED AND RESERVED]

■ For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 1321(a), the Surface Transportation Board removes and reserves 49 CFR part 1040.

[FR Doc. 2018–09558 Filed 5–3–18; 8:45 am]

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