

(DFARS) to implement section 820 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 820 expands the application of the expedited contract closeout authority of section 836 of the NDAA for FY 2017, implemented at DFARS 204.804(3)(i)(A), to certain contracts or groups of contracts that were awarded at least 7 to 10 FYs before the current FY and have completed performance or delivery at least 4 years prior to the current FY. The new 10-year standard will apply to contracts or groups of contracts for military construction, as defined in 10 U.S.C. 2801, or shipbuilding, while the 7-year standard will apply to all other contracts.

The objective of the rule is to implement the requirements of section 820, which expands the application of the expedited contract closeout authority of section 836 of the NDAA for FY 2017 to more recent, physically complete contracts. The legal basis of the rule is section 820 of the NDAA for FY 2021.

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

This rule will likely affect small entities that have been or will be awarded DoD contracts, including those under FAR part 12 procedures for the acquisition of commercial products, including commercially available off-the-shelf items, and commercial services. Data was obtained from the Electronic Data Access module of the Procurement Integrated Enterprise Environment for contracts that were physically completed at least 4 years ago and are eligible for closeout between the new standard of 7 or 10 years and the previous standard of at least 17 fiscal years after award. These numbers were then compared to the Federal Procurement Data System (FPDS) to estimate the number of contracts awarded to small entities. Contracts subject to the previous standard of 17 years are included in this estimate.

As of April 2021, the FPDS data indicate that approximately 29,200 contracts, eligible for expedited closeout under the 7-year standard, were awarded to an estimated 4,490 unique small entities. An additional estimated 1,775 contracts, subject to the 10-year standard, were awarded to approximately 576 small entities. As a result, DoD estimates that approximately 5,066 small entities will have the opportunity to benefit from the expanded expedited contract authorities provided in this rule.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

There are no practical alternatives that will accomplish the objectives of the statute.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 204

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 204 is amended as follows:

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

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

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

■ 2. Amend section 204.804 by revising paragraph (3)(i) to read as follows:

204.804 Closeout of contract files.

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(3)(i) In accordance with section 836 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328), section 824 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91), and section 820 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), contracting officers may close out contracts or groups of contracts through issuance of one or more modifications to such contracts without completing a reconciliation audit or other corrective action in accordance with FAR 4.804–5(a)(3) through (15), as appropriate, if each contract—

(A)(1) For military construction (as defined at 10 U.S.C. 2801) or shipbuilding, was awarded at least 10 fiscal years before the current fiscal year; or

(2) For all other contracts, was awarded at least 7 fiscal years before the current fiscal year;

(B) The performance or delivery was completed at least 4 years prior to the current fiscal year; and

(C) Has been determined by a contracting official, at least one level above the contracting officer, to be not otherwise reconcilable, because—

(1) The contract or related payment records have been destroyed or lost; or

(2) Although contract or related payment records are available, the time or effort required to establish the exact amount owed to the U.S. Government or amount owed to the contractor is disproportionate to the amount at issue.

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DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

[Docket DARS–2022–0005]

RIN 0750–AL31

Defense Federal Acquisition Regulation Supplement: Evaluation Factor for Employing or Subcontracting With Members of the Selected Reserve (DFARS Case 2021–D013)

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 2021.

DATES: Effective March 18, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, Telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283) that removes the burden of proof at 10 U.S.C. 2305 note when using an evaluation factor for employing or subcontracting with members of the Selected Reserve. Accordingly, this rule removes DFARS solicitation provision 252.215–7005, Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve, and makes conforming changes to the associated provision and clause prescriptions at DFARS 215.370–3.

DFARS provision 252.215–7005 is included in solicitations that contain an evaluation factor that considers whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve. If an offeror intends to use such employees or subcontractors, the provision requires the offeror to submit certain documentation as proof

of its intent with its response to the solicitation.

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

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (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 DoD is not issuing a new regulation; rather, this rule is merely removing an unneeded solicitation provision from the DFARS. The rule primarily impacts internal operating procedures and has no significant cost or administrative impact on contractors or offerors.

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

This rule removes DFARS provision 252.215–7005, Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve, and the associated prescription at DFARS 215.370–3. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold, for commercial products including commercially available off-the-shelf items, or for commercial services.

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.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and to the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This rule removes the information collection requirements associated with the provision at DFARS 252.215–7005, Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve, currently approved under Office of Management and Budget (OMB) Control Number 0704–0446, entitled “Defense Federal Acquisition Regulation Supplement (DFARS) Evaluation Factor for Use of Members of the Armed Forces Selected Reserve”. Accordingly, DoD submitted, and OMB approved, the following reduction of the annual reporting burden and OMB inventory of hours under OMB Control Number 0704–0446 as follows:

Respondents: 13.

Responses per respondent: 1.

Total annual responses: 13.

Hours per response: 20.

Total response burden hours: 260.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

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

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

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

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Revise section 215.370–1 to read as follows:

215.370–1 Definition.

As used in this section—

Selected Reserve has the meaning given that term in 10 U.S.C. 10143. Selected Reserve members normally attend regular drills throughout the year and are the group of Reserves most readily available to the President.

■ 3. Revise section 215.370–3 to read as follows:

215.370–3 Contract clause.

Use the clause at 252.215–7006, Use of Employees or Individual Subcontractors Who Are Members of the Selected Reserve, in solicitations and resulting contracts that include an evaluation factor considering whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215–7005 [Removed and Reserved]

■ 4. Remove and reserve section 252.215–7005.

■ 5. Amend section 252.215–7006 by—

■ a. In the introductory text, removing “215.370–3(b)” and adding “215.370–3” in its place; and

■ b. Revising the clause date and paragraph (a).

The revisions read as follows:

252.215–7006 Use of Employees or Individual Subcontractors Who Are Members of the Selected Reserve.

* * * * *

Use of Employees or Individual Subcontractors Who Are Members of the Selected Reserve (Mar 2022)

(a) *Definition.* As used in this clause—

Selected Reserve has the meaning given that term in 10 U.S.C. 10143. Selected Reserve members normally attend regular drills throughout the year and are the group of Reserves most readily available to the President.

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