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48 CFR Parts 211, 212, 216 et al.

Defense Acquisition Regulations; Rules, Proposed Rules, and Notice.

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 211, 212 and 252**

[Docket DARS–2015–0054]

RIN 0750–AI39

Defense Federal Acquisition Regulation Supplement: Warranty Tracking of Serialized Items (DFARS Case 2014–D026)

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 require use of the electronic contract attachments accessible via the Product Data Reporting and Evaluation Program to record and track warranty data and source of repair information for serialized items.

DATES: Effective March 25, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Ann Reilly, telephone 571–372–6176.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD published a proposed rule in the *Federal Register* at 80 FR 58671 on September 30, 2015, to require use of the electronic contract attachments accessible via the Product Data Reporting and Evaluation Program to record and track warranty data and source of repair information for serialized items. No public comments were submitted in response to the proposed rule.

II. Discussion and Analysis

There are two editorial changes from the proposed rule made in the final rule. The title “International Standards Organization/International Electrotechnical Commission” is spelled out in lieu of the acronym ISO/IEC in the definition of “issuing agency” at DFARS 246.701 and 252.246–7006(a). In addition, the list of examples of organizations that are responsible for assigning globally unique identifiers to an enterprise is removed from the definition of “issuing agency” at DFARS 246.701, 252.211–7003(a), and 252.246–7006(a), because a full list is available in the Register of Issuing Agency Codes for ISO/IEC 15459, the link for which is already provided in the definition.

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

The provision at DFARS 252.246–7005, Notice of Warranty Tracking and Serialized Items, and the clause at DFARS 252.246–7006, Warranty Tracking of Serialized Items, are prescribed for use when the solicitation includes the clause at 252.211–7003, Item Unique Identification and Valuation, and it is anticipated that the resulting contract will include a warranty for serialized items. The clause at 252.211–7003 is applicable to acquisitions valued at or below at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items, involving the furnishing of supplies, unless the conditions in DFARS 211.274–2(b) apply. This rule does not change prescriptions for the provision at 252.246–7005 and the clause at 252.246–7006; rather, this rule merely require use of the electronic contract attachments to record and track warranty data and source of repair information for serialized 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. Regulatory Flexibility Act

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

The objective of the rule is to improve the process of collecting and sharing data on warranties provided by contractors on serialized items procured by DoD. Use of the electronic formats available via the Product Data Reporting and Evaluation Program (PDREP) ensures the data elements for warranty

terms are effectively transmitted through various systems, such as Electronic Document Access, Wide Area WorkFlow, the Invoice, Receipt, Acceptance and Property Transfer module, and the PDREP Warranty Tracking database.

The final rule requires the use of the electronic formats for the “Warranty Tracking Information” and “Source of Repair Instructions” attachments, which are used to track the warranties of serialized items in accordance with the provision at DFARS 252.246–7005, Notice of Warranty Tracking of Serialized Items, and the clause at DFARS 252.246–7006, Warranty Tracking of Serialized Items. This rule is also necessary to provide clear guidance on the requirements for completion and submission of the warranty attachments.

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

According to data available in the Federal Procurement Data System, in fiscal year (FY) 2014 DoD awarded 5,807 contracts that contain one or more warranty clauses. Subject matter experts within DoD estimate that almost twice as many solicitations (11,500) issued by DoD in FY 2014 may have contained a warranty clause. It is also estimated that an average of four offers may have been received in response those solicitations, or 46,000 total offers. Of those responses, approximately 85 percent, or 39,100 responses, are estimated to be received from small businesses.

It is estimated that fifty percent of the time (for approximately 5,750 solicitations) the Government will specify the desired warranty terms, in which case the contractor provides the remaining data elements on the “Warranty Tracking Information” attachment and the “Source of Repair Instructions” attachment with its proposal, at contract award, or at the point of delivery. The other fifty percent of the time, the contractor will be required to specify all the warranty terms on the “Warranty Tracking Information” attachment and the “Source of Repair Instructions” attachment.

This rule does not create any new reporting or recordkeeping requirements. Offerors and contractors are already required to complete the attachments in accordance with the provision at DFARS 252.246–7005, Notice of Warranty Tracking of Serialized Items, and the clause at DFARS 252.246–7006, Warranty Tracking of Serialized Items. This rule merely requires contractors and offerors

to complete the existing warranty attachments using the specified electronic formats.

No known alternatives to the rule have been identified that would achieve the stated objectives.

VI. Paperwork Reduction Act

The rule contains 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); however, these changes to the DFARS do not impose additional information collection requirement to the paperwork burden previously approved under OMB Control Number 0704-0481, entitled “Warranty Tracking of Serialized Items.” The rule clarifies existing requirements for completion and submission of warranty attachments and requires electronic submission of those attachments by using the formats available in the Product Data Reporting and Evaluation Program.

List of Subjects in 48 CFR Parts 246 and 252

Government procurement.

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Editor, Defense Acquisition Regulations System.

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

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

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

PART 246—QUALITY ASSURANCE

■ 2. Amend section 246.701 by—

■ a. Revising the heading and adding introductory text;

■ c. Removing the last paragraph; and

■ d. Adding, in alphabetical order, definitions of “Enterprise,” “Enterprise identifier,” “Issuing agency,” “Serialized item,” “Unique item identifier,” and “Warranty tracking”. The revision and additions read as follows:

246.701 Definitions.

As used in this subpart—

* * * * *

Enterprise means the entity (e.g., a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by an issuing agency.

Issuing agency means an organization responsible for assigning a globally unique identifier to an enterprise, as

indicated in the Register of Issuing Agency Codes for International Standards Organization/International Electrotechnical Commission 15459, located at http://www.aimglobal.org/?Reg_Authority15459.

Serialized item means each item produced is assigned a serial number that is unique among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.

Unique item identifier means a set of data elements marked on an item that is globally unique and unambiguous.

Warranty tracking means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

■ 3. Amend section 246.710 by revising paragraph (3) to read as follows:

246.710 Contract clauses.

* * * * *

(3) When the solicitation includes the clause at 252.211–7003, Item Unique Identification and Valuation, which is prescribed in 211.274–6(a), and it is anticipated that the resulting contract will include a warranty for serialized items—

(i) Use the provision at 252.246–7005, Notice of Warranty Tracking of Serialized Items, in the solicitation if the Government does not specify a warranty and offerors will be required to enter data with the offer;

(ii) Use the clause at 252.246–7006, Warranty Tracking of Serialized Items, in the solicitation and contract; and

(iii) Include the following warranty attachments, available at https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm, in the solicitation and contract and see 246.710–70:

(A) Warranty Tracking Information.

(B) Source of Repair Instructions.

■ 4. Revise section 246.710–70 to read as follows:

246.710–70 Warranty attachments.

Follow the procedures at PGI 246.710–70 regarding warranty attachments.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.211–7003 by—

■ a. Removing the clause date “(DEC 2013)” and adding “(MAR 2016)” in its place; and

■ b. In paragraph (a), revising the definition of “Issuing agency”.

The revision reads as follows:

252.211–7003 Item Unique Identification and Valuation.

* * * * *

(a) * * *

Issuing agency means an organization responsible for assigning a globally unique identifier to an enterprise, as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at http://www.aimglobal.org/?Reg_Authority15459.

* * * * *

■ 6. Amend section 252.246–7005 by—

■ a. Removing from the introductory text “246.710(3)(i)(A)” and adding “246.710(3)(i)” in its place;

■ b. Removing the clause date “(JUN 2011)” and adding “(MAR 2016)” in its place; and

■ c. Revising paragraphs (a) and (b).

The revisions read as follows:

252.246–7005 Notice of Warranty Tracking of Serialized Items.

* * * * *

(a) *Definitions. Duration, enterprise, enterprise identifier, fixed expiration, item type, serialized item, starting event, unique item identifier, usage, warranty administrator, warranty guarantor, and warranty tracking* are defined in the clause at 252.246–7006, Warranty Tracking of Serialized Items.

(b) *Reporting of data for warranty tracking and administration.* (1) The Offeror shall provide the information required by the attachment entitled “Warranty Tracking Information” on each contract line item number, subtitle item number, or exhibit line item number for warranted items with its offer. Information required in the warranty attachment for each warranted item shall include such information as duration, fixed expiration, item type, starting event, usage, warranty administrator enterprise identifier, and warranty guarantor enterprise identifier.

(2) The successful offeror will be required to provide the following information no later than when the warranted items are presented for receipt and/or acceptance, in accordance with the clause at 252.246–7006—

(i) The unique item identifier for each warranted item required by the attachment entitled “Warranty Tracking Information;” and

(ii) All information required by the attachment entitled “Source of Repair Instructions” for each warranted item.

(3) For additional information on warranty attachments, see the “Warranty and Source of Repair” training and “Warranty and Source of Repair Tracking User Guide” accessible on the Product Data Reporting and Evaluation Program (PDREP) Web site at https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm. (End of provision)

■ 7. Amend section 252.246–7006 by—

■ a. Removing from the introductory text “246.710(3)(i)(B)” and adding “246.710(3)(ii)” in its place;

■ b. Removing the clause date “(JUN 2011)” and adding “(MAR 2016)” in its place;

■ c. Revising in paragraph (a) the definitions of “Issuing agency” and “Starting event”; and

■ d. Revising paragraph (b).

The revision reads as follows:

252.246–7006 Warranty Tracking of Serialized Items.

* * * * *

(a) * * *

Issuing agency means an organization responsible for assigning a globally unique identifier to an enterprise, as indicated in the Register of Issuing Agency Codes for International Standards Organization/International Electrotechnical Commission 15459, located at http://www.aimglobal.org/?Reg_Authority15459.

* * * * *

Starting event means the event or action that initiates the warranty, such as first use or upon installation.

* * * * *

(b) *Reporting of data for warranty tracking and administration.* (1) The Contractor shall provide the information required by the attachment entitled “Warranty Tracking Information” on each contract line item number, subtitle item number, or exhibit line item number for warranted items no later than the time of award. Information required in the warranty attachment shall include such information as duration, fixed expiration, item type, starting event, usage, warranty administrator enterprise identifier, and warranty guarantor enterprise identifier.

(2) The Contractor shall provide the following information no later than when the warranted items are presented for receipt and/or acceptance—

(i) The unique item identifier for each warranted item required by the attachment entitled “Warranty Tracking Information;” and

(ii) The warranty repair source information and instructions for each warranted item required by the attachment entitled “Source of Repair Instructions.”

(3) The Contractor shall submit the data for warranty tracking to the Contracting Officer with a copy to the requiring activity and the Contracting Officer Representative.

(4) For additional information on warranty attachments, see the “Warranty and Source of Repair” training and “Warranty and Source of Repair Tracking User Guide” accessible on the Product Data Reporting and Evaluation Program (PDREP) Web site at https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm.

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[FR Doc. 2016–06720 Filed 3–24–16; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217 and 234

[Docket DARS–2015–0042]

RIN 0750–AI62

Defense Federal Acquisition Regulation Supplement: Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units (DFARS Case 2015–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 2015 that amended a section of the National Defense Authorization Act for Fiscal Year 2010, to extend and modify contract authority for advanced component development and prototype units.

DATES: Effective March 25, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Janetta Brewer, telephone 571–372–6104.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 80 FR 72671 on November 20, 2015, to revise the DFARS to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291, enacted December 19, 2014), which amended paragraphs (a) and (b) of section 819 of the NDAA for FY 2010 (10 U.S.C. 2302 note). The rule

proposed to amend DFARS 217.202(2) and 234.005–1(1) to add “or initial production” to the text, to allow for inclusion of a contract line item (possibly an option) for advanced component development and prototype units to go to initial production without further competition. The rule also proposed to amend DFARS 234.005–1(2) to extend this authority to September 30, 2019. There were no public comments submitted in response to the proposed rule. There are no changes from the proposed rule made in the final rule.

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

This case does not add 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. Regulatory Flexibility Act

DoD has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is necessary to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291). Section 811 amends paragraphs (a) and (b) of section 819 of the NDAA for FY 2010 (10 U.S.C. 2302 note). The objective of this rule is to provide authority for the inclusion of a contract line item (possibly an option) for advanced component development and prototype units to go to initial production without further competition.

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