

rule explicitly allows delegation of authority from the procuring contracting office to the Government contract administration office to negotiate and settle direct costs questioned in incurred cost audits.

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

The statute that applies to the publication of the 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 it merely involves assignment among DoD agencies of an existing contract administrative function. This rule does not have a significant cost or administrative impact on contractors or offerors, and it does not have a significant effect beyond DoD's internal operating procedures.

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

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or prescriptions for their use.

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 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 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 242

Government procurement.

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

Therefore, 48 CFR part 242 is amended as follows:

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 242 continues to read as follows:

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

■ 2. Amend section 242.302 by adding paragraph (b)(S–71) to read as follows:

242.302 Contract administration functions.

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(b) * * *

(S–71)(A) Except for classified contracts, negotiate or settle questioned direct costs in an incurred cost audit. The procuring contracting officer may delegate this authority to the contract administration office (CAO) only upon prior coordination and agreement with the CAO. Upon such delegation, the procuring contracting officer shall provide the CAO access within 30 days to all supporting documentation in their

possession related to the questioned direct costs in an incurred cost audit.

(B) After settlement of the questioned direct costs, the CAO shall provide the procuring contracting office the results of the settlement. The procuring contracting office shall make any adjustments resulting from the settlement on affected contracts and report such adjustments to the CAO.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 243 and 252

[Docket DARS–2023–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

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

ACTION: Final rule.

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

DATES: Effective March 22, 2023.

FOR FURTHER INFORMATION CONTACT: Jennifer D. Johnson, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: This final rule makes the following changes:

1. A final rule published at 88 FR 6578 on January 31, 2023, provided an incorrect reference at amendatory instruction 149 by citing “242.205–71” in lieu of “243.205–71”. This rule provides the correct amendatory instruction.

2. This rule amends section 252.215–7009, Proposal Adequacy Checklist, at item 18 in the column entitled “Submission item” in the introductory text and paragraph a by updating terminology referencing commercial products.

List of Subjects in 48 CFR Parts 243 and 252

Government procurement.

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

Therefore, 48 CFR parts 243 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 243 and 252 continues to read as follows:

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

PART 243—CONTRACT MODIFICATIONS

243.205–71 [Amended]

■ 2. Amend section 243.205–71 by removing “commercial items” and

adding “commercial products and commercial services” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.215–7009—
 ■ a. By revising the provision date; and
 ■ b. In the provision checklist table by revising reference number 18.

The revisions read as follows:

252.215–7009 Proposal Adequacy Checklist.

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Proposal Adequacy Checklist (Mar 2023)

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PROPOSAL ADEQUACY CHECKLIST

References	Submission item	Proposal page no.	If not provided EXPLAIN (may use continuation pages)
* * * * *			
18. FAR 52.215–20, FAR 2.101, “commercial product” or “commercial service”.	Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial products or commercial services proposed either at the prime or subcontractor level, in accordance with provision 52.215–20? a. Has the offeror specifically identified the type of commercial product or commercial service claim (FAR 2.101 “commercial product” or “commercial service” definition), and the basis on which the commercial product or commercial service meets the definition? b. For modified commercial products (FAR 2.101 “commercial product” definition); did the offeror classify the modification(s) as either— i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or ii. A minor modification (paragraph (3)(iii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403–1(c)(3)(iii)(B)? c. For proposed commercial products “of a type”, or “evolved” or modified (FAR 2.101 “commercial product” definition), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?		
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