## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

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

**[Docket DARS–2019–0065]**

**RIN 0750–AK58**

# Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision Related to Disclosure of Information for Litigation Support (DFARS Case 2019–D021)

**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 remove a provision that is no longer necessary, pursuant to action taken by the Regulatory Reform Task Force.

**DATES:** Effective October 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571–372–6093.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD is amending the DFARS to remove DFARS provision 252.204–7013, Limitations on the Use or Disclosure of Information by Litigation Support Contractors, its associated prescription at 204.7403 and related text at 209.505–4(b)(ii) and 212.301. This provision is included in solicitations for the acquisition of litigation support services. The provision includes a representation that, by submission of its offer, the offeror agrees to handle and protect all litigation information and documentation as described in the provision, indemnify the Government from any liability or claim that arises from the offeror's misuse of the litigation information, and ensure its employees are subject to the same use and nondisclosure obligations stated in the provision prior to accessing any litigation information. The provision also notifies offerors that third parties holding proprietary rights or any other legally protectable interest in the provided litigation information have the right of direct action against the offeror for any unauthorized use or disclosure by the offeror.

DFARS provision 252.204–7013 is unnecessary. The same information is provided to offerors by including DFARS clause 252.204–7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors, in a solicitation.

### II. Discussion and Analysis

DFARS clause 252.204–7014 implements the authority and requirements of 10 U.S.C. 129d, which permits DoD to disclose information to a litigation support contractor if the disclosure is for the sole purpose of providing administrative, technical, or professional services to DoD in anticipation of or during litigation. The statute also requires that, under a contract, the contractor agree to and acknowledge specific terms and conditions on the use and disclosure of the information, and that any violation of these terms and conditions is a basis for termination of the litigation support contract. DFARS clause 252.204–7014 is included in all solicitations and contracts that involve litigation support services. The clause contains all of the information in DFARS provision 252.204–7013, as well as a statement that violation of the terms and conditions of the clause is a basis for termination of the contract. As such, the DFARS provision is redundant and can be removed from the DFARS.

The repeal of the DFARS provision implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on the provision. Subsequently, the DoD Task Force reviewed the requirements of DFARS provision 252.204–7013 and determined that it could be repealed.

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

This rule only removes obsolete DFARS provision 252.204–7013, Limitations on the Use or Disclosure of Information by Litigation Support Contractors. This rule does not create any new provisions or clauses or impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

### IV. 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 Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) 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 unnecessary provision from the DFARS.

### V. 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.

### VI. 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

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C.

1707(a)(1) (see section IV. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

### 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 204, 209, 212, and 252

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 204, 209, 212, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 209, 212, and 252 continues to read as follows:

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

## PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

### 204.7403 [Amended]

■ 2. Amend section 204.7403 by—

■ a. In the section heading, removing ''Solicitation provision and contract'' and adding ''Contract'' in its place;

■ b. Removing paragraph (a); and

■ c. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

## PART 209—CONTRACTOR QUALIFICATIONS

■ 3. Revise section 209.505–4(b)(ii) to read as follows:

### 209.505–4 Obtaining access to proprietary information.

(b) * * *

(ii) For litigation support contractors accessing litigation information, including that originating from third parties, use and non-disclosure requirements are addressed through the use of the clause at 252.204–7014, as prescribed at 204.7403(a). Pursuant to the clause, litigation support contractors are not required to enter into non-disclosure agreements directly with any third party asserting restrictions on any litigation information.

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

### 212.301 [Amended]

■ 4. Amend section 212.301 by—

■ a. Removing paragraph (f)(ii)(E);

■ b. Redesignating paragraphs (f)(ii)(F) and (G) as paragraphs (f)(ii)(E) and (F), respectively;

■ c. In the newly redesignated (f)(ii)(E) removing ''204.7403(b)'' and adding ''204.7403(a)'' in its place; and

■ d. In the newly redesignated (f)(ii)(F) removing ''204.7403(c)'' and adding ''204.7403(b)'' in its place.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 252.204–7013 [Removed and Reserved]

■ 5. Remove and reserve section 252.204–7013.

### 252.204–7014 [Amended]

■ 6. Amend section 252.204–7014, in the introductory text, by removing ''204.7403(b)'' and adding ''204.7403(a)'' in its place.

### 252.204–7015 [Amended]

■ 7. Amend section 252.204–7015, in the introductory text, by removing ''204.7403(c)'' and adding ''204.7403(b)'' in its place.

[FR Doc. 2019–23802 Filed 10–30–19; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR Parts 207, 215, 216, and 234

**[Docket DARS–2019–0026]**

**RIN 0750–AK38**

## Defense Federal Acquisition Regulation Supplement: Reliability and Maintainability in Weapon System Design (DFARS Case 2019–D003)

**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 2018 that requires the use of reliability and maintainability sustainment factors in weapon system design.

**DATES:** Effective October 31, 2019.

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

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 125 on June 28, 2019, to implement section 834 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018. Section 834 of the NDAA for FY 2018 amends 10 U.S.C. to add section 2443, sustainment factors in weapon system design which requires program managers or comparable requiring activity officials exercising program management responsibilities to ensure that reliability and maintainability are included in the performance attributes of the key performance parameters on sustainment during the development of capabilities requirements for major weapon systems design and contracts for the—

- Engineering and manufacturing development of a weapon system, including embedded software; or
- Production of a weapon system, including embedded software.

As a matter of policy, the Under Secretary of Defense for Acquisition and Sustainment directed the application of the requirements of 10 U.S.C. 2443 to the technical maturation and risk reduction phase. No public comments were received on the proposed rule, and no changes are 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 rule does not propose to create 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.