

(b) The Offeror acknowledges by submission of its offer that by acceptance of the contract resulting from this solicitation, the Offeror may exceed the applicable small business size standard of the North American Industry Classification System (NAICS) code assigned to the contract and would no longer qualify as a small business concern for that NAICS code. (Small business size standards matched to industry NAICS codes are published by the Small Business Administration and are available at <http://www.sba.gov/content/table-small-business-size-standards>.) The Offeror is therefore encouraged to develop the capabilities and characteristics typically desired in contractors that are competitive as other-than-small contractors in this industry.

(c) For procurement technical assistance, the Offeror may contact the nearest Procurement Technical Assistance Center (PTAC). PTAC locations are available at www.dla.mil/SmallBusiness/Pages/ptac.aspx.

(End of provision)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 213, and 252

RIN 0750-A140

Defense Federal Acquisition Regulation Supplement: Past Performance Information Retrieval System—Statistical Reporting (PIRS—SR) (DFARS Case 2014-D015)

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 contracting officers to consider information in the Statistical Reporting module of the Past Performance Information Retrieval System when evaluating past performance of offerors under competitive solicitations for supplies using simplified acquisition procedures.

DATES: Effective May 26, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hawes, telephone 571-372-6115.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 80 FR 4848 on January 29, 2015, to revise the DFARS to add a new provision at DFARS

252.213-7000, Notice to Prospective Suppliers on the Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations, for use in competitive solicitations for supplies using FAR part 13 simplified acquisition procedures, including those for acquisitions valued at less than or equal to \$1 million under FAR 13.5. 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 the changes made to the rule is provided below:

A. Analysis of Public Comment

Comment: A respondent commented that streamlining a formal and systematic process will improve the opportunities for small businesses and reduce bias in the award of Government contracts.

Response: No changes were made as a result of this comment.

B. Other Changes

The final rule includes a clarification in the prescription at DFARS 213.106-2-70 that the provision is applicable for use in competitive solicitations using FAR part 12 procedures for the acquisition of commercial items. A minor editorial change is also made at 212.301(f)(v) to address the reference to the DFARS provision 252.213-7000, Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations, in the same manner as the other content of this section.

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

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to require contracting officers to consider information available in Past Performance Information Retrieval System—Statistical Reporting (PIRS—SR) when evaluating the past performance of offerors under competitive solicitations for supplies using FAR part 13 simplified acquisition procedures (including acquisitions under the authority of FAR subpart 13.5 valued at less than or equal to \$1 million).

This rule will help fill the gap between the higher DoD threshold for the collection and evaluation of past performance information and the thresholds at FAR 15.304(c)(3)(i). PIRS—SR collects quantifiable delivery and quality data from existing systems and uses that data to classify each supplier's performance by Federal supply class and product service code. Contracting officers will use this objective data to help make better-informed best value award decisions for supply contracts valued at less than or equal to \$1 million.

No comments were received from the public regarding the initial regulatory flexibility analysis.

This rule will apply to small businesses submitting offers on competitive solicitations for supplies issued using simplified acquisition procedures valued at less than \$1 million. According to a report generated in the Federal Procurement Data System, in fiscal year 2013, DoD made 15,258 new competitive awards for commercial supplies valued at less than or equal to \$1 million to 4,018 unique small businesses.

The rule creates no new reporting, recordkeeping, or other compliance requirements. There are no known significant alternatives to the rule. The impact of this rule on small business is not expected to be significant.

V. 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 212, 213, and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 213, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 213, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. In section 212.301, redesignate paragraphs (f)(v) through (xviii) as paragraphs (f)(vi) through (xix), respectively, and add a new paragraph (f)(v) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(v) *Part 213—Simplified Acquisition Procedures.* Use the provision at 252.213–7000, Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations, as prescribed in 213.106–2–70.

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PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Add sections 213.106–2 and 213.106–2–70 to subpart 213.1 to read as follows:

213.106–2 Evaluation of quotations or offers.

(b)(i) For competitive solicitations for supplies using FAR part 13 simplified acquisition procedures, including acquisitions valued at less than or equal to \$1 million under the authority at FAR subpart 13.5, the contracting officer shall—

(A) Consider data available in the statistical reporting module of the Past Performance Information Retrieval System (PPIRS–SR) regarding the supplier's past performance history for the Federal supply class (FSC) and product or service code (PSC) of the supplies being purchased. Procedures for the use of PPIRS–SR in the evaluation of quotations or offers are provided in the PPIRS–SR User's Manual available under the references section of the PPIRS Web site at www.ppirs.gov;

(B) Ensure the basis for award includes an evaluation of each supplier's past performance history in PPIRS–SR for the FSC and PSC of the supplies being purchased; and

(C) In the case of a supplier without a record of relevant past performance history in PPIRS–SR for the FSC or PSC of the supplies being purchased, the supplier may not be evaluated favorably or unfavorably for its past performance history.

213.106–2–70 Solicitation provision.

Use the provision at 252.213–7000, Notice to Prospective Suppliers on the Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations, in competitive solicitations for supplies when using FAR part 13 simplified acquisition procedures, including competitive solicitations using FAR part 12 procedures for the acquisition of commercial items and acquisitions valued at less than or equal to \$1 million under the authority at FAR subpart 13.5.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add new section 252.213–7000 to read as follows:

252.213–7000 Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations.

As prescribed in 213.106–2–70, use the following provision:

Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations (May 2015)

(a) The Past Performance Information Retrieval System—Statistical Reporting (PPIRS–SR) application (<http://www.ppirs.gov>) will be used in the evaluation of suppliers' past performance in accordance with DFARS 213.106–2(b)(i).

(b) PPIRS–SR collects quality and delivery data on previously awarded contracts and orders from existing Department of Defense reporting systems to classify each supplier's performance history by Federal supply class (FSC) and product or service code (PSC). The PPIRS–SR application provides the contracting officer quantifiable past performance information regarding a supplier's quality and delivery performance for the FSC and PSC of the supplies being purchased.

(c) The quality and delivery classifications identified for a supplier in PPIRS–SR will be used by the contracting officer to evaluate a supplier's past performance in conjunction with the supplier's references (if requested) and other provisions of this solicitation under the past performance evaluation factor. The Government reserves the right to award to the supplier whose quotation or offer represents the best value to the Government.

(d) PPIRS–SR classifications are generated monthly for each contractor and can be reviewed by following the access instructions in the PPIRS–SR User's Manual found at https://www.ppirs.gov/ppirsfiles/pdf/PPIRS-SR_UserMan.pdf. Contractors are granted access to PPIRS–SR for their own classifications only. Suppliers are encouraged to review their own classifications, the PPIRS–SR reporting procedures and classification methodology detailed in the PPIRS–SR User's Manual, and PPIRS–SR Evaluation Criteria available from the references at <http://www.ppirs.gov/ppirsfiles/reference.htm>. The method to challenge a rating generated by PPIRS–SR is provided in the User's Manual.

(End of provision)

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