

Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations solely for the acquisition of COTS items, that include the clause at 252.270–7002, Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

(c) Use the clause at 252.270–7002, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations and contracts solely for the acquisition of COTS items, for approved pilot program acquisitions.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

[Docket DARS–2024–0018]

RIN 0750–AM03

#### Defense Federal Acquisition Regulation Supplement: Procurement Technical Assistance Program (DFARS Case 2024–D006)

**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 2024 that modifies certain definitions associated with the Procurement Technical Assistance Program.

**DATES:** Effective October 10, 2024.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Snyder, telephone 703–508–7524.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published a proposed rule in the **Federal Register** at 89 FR 46836 on May 30, 2024, to implement section 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118–31; 10 U.S.C. 4951). Section 853

amends the definitions of “nonprofit organization” and “business entities” at 10 U.S.C. 4951 for the Procurement Technical Assistance Program (PTAP). One respondent submitted public comments in response to the proposed rule.

##### II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments is provided, as follows:

###### A. Summary of Significant Changes From the Proposed Rule

There are no significant changes from the proposed rule.

###### B. Analysis of Public Comments

*Comment:* The respondent indicated that the statement: “In addition, business entities, including corporations, associations, partnerships, limited liability companies, limited liability partnerships, consortia, not-for-profit, or other legal entities will also be able to be a cooperative agreement holder” in section IV of the proposed rule preamble is inaccurate. The respondent indicated that the term “eligible entity” refers to the entities that may be served by cooperative agreement holders. The respondent also indicated that “(as defined in 10 U.S.C. 4951)” added to DFARS clause 252.205–7000(a) is misleading, as “business entities” are the recipients of procurement technical assistance, not the providers.

*Response:* Subsection (1) of 10 U.S.C. 4951 defines the term “eligible entity” to mean a state, local government, nonprofit organization, and tribal organization. Subsection (5) of 10 U.S.C. 4951 defines the term “business entity” to mean a corporation, association, partnership, limited liability company, limited liability partnership, consortia, not-for-profit, or other legal entity. The statute at 10 U.S.C. 4952 specifies that the purpose of the PTAP is, in part, to increase assistance provided by DoD to “eligible entities” furnishing procurement technical assistance to “business entities”. Therefore, the referenced statement in section IV of the proposed rule preamble is inaccurate and is corrected in this final rule. However, the parenthetical “as defined in 10 U.S.C. 4951” in the contract clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders, is accurate as “business entities” in this context refers to those entities that may receive assistance.

##### 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 final rule amends the clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to not apply to acquisitions at or below the SAT, and will continue to apply to acquisitions of commercial products excluding COTS items, and to acquisitions of commercial services.

##### IV. Expected Impact of the Rule

This final rule is expected to impact DoD contractors whose contracts include the clause at DFARS 252.205–7000. The clause requires contractors to provide cooperative agreement holders under the PTAP, upon request, with a list of the contractor’s employees or offices responsible for entering into subcontracts under defense contracts. As a result of this final rule, such contractors may be required to provide the list to different entities that are cooperative agreement holders under the PTAP.

The changes in section 853 allow any type of nonprofit organization to be a cooperative agreement holder under the PTAP. In addition, section 853 provides a definition of “business entities” to specify the entities that may receive assistance under the PTAP, including corporations, associations, partnerships, limited liability companies, limited liability partnerships, consortia, not-for-profit, or other legal entities. These changes are reflected in the revisions to the clause at DFARS 252.205–7000. As a result, there may be increases in the number of entities that become cooperative agreement holders and in the number of business entities that receive assistance under the PTAP.

##### 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, as amended.

#### VI. 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.

#### VII. 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 final rule is necessary to implement section 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118–31; 10 U.S.C. 4951). Section 853 modifies the definitions of “nonprofit organization” and “business entities” at 10 U.S.C. 4951 for the Procurement Technical Assistance Program. The objective of this rule is to implement the revised definitions in the contract clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders. The clause requires contractors to provide cooperative agreement holders under the Procurement Technical Assistance Program, upon request, with a list of the contractor’s employees or offices

responsible for entering into subcontracts under defense contracts.

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

According to data from the Procurement Business Intelligence Service, in the last three fiscal years, DoD awarded contracts that included the clause at 252.205–7000 to unique small entities as follows: 5,652 in fiscal year 2021, 5,127 in fiscal year 2022, and 5,663 in fiscal year 2023. This averages out to approximately 5,480 per fiscal year. Therefore, DoD estimates that the number of small entities to which this rule will apply is approximately 5,480.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known significant alternative approaches that would accomplish the stated objectives.

#### VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this final rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0286, entitled Defense FAR Supplement (DFARS) Part 205, Publicizing Contract Actions, and DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders.

#### List of Subjects in 48 CFR Part 252

Government procurement.

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

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 252 as follows:

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

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

■ 2. Revise and republish section 252.205–7000 to read as follows:

#### 252.205–7000 Provision of Information to Cooperative Agreement Holders.

As prescribed in 205.470, use the following clause:

#### Provision of Information to Cooperative Agreement Holders (OCT 2024)

(a) *Definition.* As used in this clause—  
*Cooperative agreement holder* means a State or local government; a nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Under Secretary of Defense for Acquisition and Sustainment to furnish procurement technical assistance to business entities (as defined in 10 U.S.C. 4951).

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

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