

Acquisition Alert

DFARS Amended to Increase Threshold Requirement for Justification and Approvals for Sole Source 8(a) Awards

Effective June 5, 2020, the Department of Defense has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). This new ruling raises the threshold requiring a justification and approval to sole source an 8(a) contract from \$22 million to those exceeding \$100 million.

The threshold change is the result of the implementation of the National Defense Authorization Act (NDAA) Fiscal Year 2020, Section 823. This section also designates the head of the procuring activity as the approval authority. Additionally, the new requirement now appears in DFARS section 206.304 and a new DFARS section, 206-303-1, Requirements.

The new rule does not create any solicitation provisions or contract clauses pertaining to contracts at or below the simplified acquisition threshold (SAT) or for commercial items, including Commercially Available Off-the-Shelf (COTS) items.

The new rule will not be published for public comment as it does not fall under the Office of Federal Procurement Policy (OFPP) statute typically required of the Federal Acquisition Regulation (FAR). If a procurement policy, regulation, procedure, or form has a significant cost or administrative impact on contractors or if it involves the expenditure of public funds and an effect beyond the internal operations of the publishing agency, statute 41 USC 1701(a)(1) typically requires it to be published for public comment. However, this DFARS rule will only impact internal DoD operating procedures on justifications and approvals, thus having a limited impact outside the agency.

Implementation of section 823, FY2020 NDAA

Raises the threshold requiring a justification and approval to award a sole source contract to an 8(a) participant from \$22 million to \$100 million.

Designates the head of the procuring activity as the approval authority



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