



(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 209, 216, 229, and 252

RIN 0750-AH38

Defense Federal Acquisition Regulation Supplement: Separation of Combined Provisions and Clauses (DFARS Case 2011-D048)

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 separate provisions and clauses that are currently combined in order to be in compliance with DFARS drafting conventions.

DATES: Effective Date: [Insert date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 76 FR 71922 on November 21, 2011, to separate provisions and clauses that are currently combined in order to comply with DFARS drafting conventions. A provision is included only in the

solicitation, and generally includes representations and certifications, to which the offeror responds in its offer. A contract clause is included in both the solicitation and the resultant contract, and provides the terms that apply throughout contract performance. It is inconsistent with DFARS drafting conventions to combine a provision and a clause in a single clause. This rule removes the representations from the following five DFARS clauses and creates five new provisions to be used in solicitations that include the associated clauses:

FROM DFARS CLAUSE	TO NEW PROVISION
252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus.	252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus-Representation.
252.216-7000, Economic Price Adjustment-Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products	252.216-7007, Economic Price Adjustment-Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products-Representation
252.216-7003, Economic Price Adjustment-Wage Rates or Material Prices Controlled by a Foreign Government	252.216-7008, Economic Price Adjustment-Wage Rates or Material Prices Controlled by a Foreign Government-Representation.
252.229-7003, Tax Exemptions (Italy)	252.229-7012, Tax Exemptions (Italy)-Representation
252.229-7005, Tax Exemptions (Spain)	252.229-7013, Tax Exemptions (Spain)-Representation

Conforming changes are also required to DFARS 252.204-7007, Alternate A, Annual Representations and Certifications, and the associated prescriptions at DFARS 204.1202(2) to list the new provisions in lieu of the current DFARS clauses.

II. Discussion and Analysis of the Public Comments

There were no public responses submitted that pertained to the proposed rule. Minor changes made to the proposed rule include adding new clause numbers and dates, edits to section titles as required to reflect the addition of new provisions, and minor editorial and grammatical changes to paragraph (a) of 252.229-7005, Tax Exemptions (Spain).

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

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small

entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it does not add any new requirements - it only reformats existing requirements of five clauses into separate provisions and clauses.

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 Parts 204, 209, 216, 229, and 252.

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 209, 216, 229, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 204, 209, 216, and 229 is revised to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

2. Amend section 204.1202 by revising paragraphs (2)(ii), (iii), (iv), (xi), and (xii) to read as follows:

204.1202 Solicitation provision.

* * * * *

(2) * * *

(ii) 252.209-7002, Disclosure of Ownership or Control by a Foreign Government.

(iii) 252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus-Representation.

(iv) 252.216-7008, Economic Price Adjustment-Wage Rates or Material Prices Controlled by a Foreign Government-Representation.

* * * * *

(xi) 252.229-7012, Tax Exemptions (Italy)-Representation.

(xii) 252.229-7013, Tax Exemptions (Spain)-Representation.

PART 209-CONTRACTOR QUALIFICATIONS

3. Revise section 209.470-4 to read as follows:

209.470-4 Solicitation provision and contract clause.

(a) Use the provision at 252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus-Representation, in all solicitations with institutions of higher education.

(b) Use the clause at 252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

PART 216-TYPES OF CONTRACTS

4. Amend section 216.203-4-70 by—
 - a. Revising the section heading; and
 - b. Revising paragraphs (a) and (c) to read as follows:

216.203-4-70 Additional provisions and clauses.

(a) Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products. (1)(i) The price adjustment clause at 252.216-7000, Economic Price Adjustment-Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, may be used in fixed-price supply solicitations and contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price exists for the particular product being acquired.

(ii) The 10 percent figure in paragraph (d)(1) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

(2) Use the price adjustment provision at 252.216-7007, Economic Price Adjustment-Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products-Representation, in solicitations that include the clause at 252.216-7000, Economic Price Adjustment-Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

* * * * *

(c) Price adjustment for wage rates or material prices controlled by a foreign government. (1)(i) The price

adjustment clause at 252.216-7003, Economic Price Adjustment-Wage Rates or Material Prices Controlled by a Foreign Government, may be used in fixed-price supply and service solicitations and contracts when—

(A) The contract is to be performed wholly or in part in a foreign country; and

(B) A foreign government controls wage rates or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(ii) Verify the base wage rates and material prices prior to contract award and prior to making any adjustment in the contract price.

(2) Use the provision at 252.216-7008, Economic Price Adjustment-Wage Rates or Material Prices Controlled by a Foreign Government-Representation, in solicitations that include the clause DFARS 252.216-7003, Economic Price Adjustment-Wage Rates or Material Prices Controlled by a Foreign Government.

PART 229—TAXES

5. Amend section 229.402-70 by—

a. Revising the section heading; and

b. Revising paragraphs (c) and (e) to read as follows:

229.402-70 Additional provisions and clauses.

* * * * *

(c) (1) Use the clause at 252.229-7003, Tax Exemptions (Italy), in solicitations and contracts when contract performance will be in Italy.

(2) Use the provision at 252.229-7012, Tax Exemptions (Italy)-Representation, in solicitations that contain the clause at 252.229-7003, Tax Exemptions (Italy).

* * * * *

(e) (1) Use the clause at 252.229-7005, Tax Exemptions (Spain), in solicitations and contracts when contract performance will be in Spain.

(2) Use the provision at 252.229-7013, Tax Exemptions (Spain)-Representation, in solicitations that contain the clause at 252.229-7005, Tax Exemptions (Spain).

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

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

7. Amend section 252.204-7007 by—

a Amending the clause date by removing "(NOV 2011)" and adding in its place "(MAR 2012)"; and

b Revising paragraph (d) (1) to read as follows:

252.204-7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d) (1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country. Applies to all solicitations expected to result in contracts of \$150,000 or more.

(ii) 252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus-Representation. Applies to all solicitations with institutions of higher education.

(iii) 252.216-7008, Economic Price Adjustment-Wage Rates or Material Prices Controlled by a Foreign Government. Applies to solicitations for fixed-price supply and service contracts when the contract is to be performed wholly or in part in a foreign country, and a foreign government controls wage rates or material prices and may during contract performance impose a mandatory change in wages or prices of materials.

(iv) 252.225-7042, Authorization to Perform. Applies to all solicitations when performance will be wholly or in part in a foreign country.

(v) 252.229-7012, Tax Exemptions (Italy)-Representation. Applies to solicitations when contract performance will be in Italy.

(vi) 252.229-7013, Tax Exemptions (Spain)-
Representation. Applies to solicitations when contract
performance will be in Spain.

* * * * *

8. Add section 252.209-7003 to read as follows:

**252.209-7003 Reserve Officer Training Corps and Military
Recruiting on Campus-Representation.**

As prescribed in 209.470-4(a), use the following provision:

RESERVE OFFICER TRAINING CORPS AND MILITARY RECRUITING ON
CAMPUS-REPRESENTATION (MAR 2012)

(a) Definition. "Institution of higher education," as
used in this provision, is defined in the clause at 252.209-
7005, Reserve officer Training Corps and Military Recruiting on
Campus.

(b) Limitation on contract award. Except as provided in
paragraph (c) of this provision, an institution of higher
education is ineligible for contract award if the Secretary of
Defense determines that the institution has a current policy or
practice (regardless of when implemented) that prohibits or in
effect prevents-

(1) The Secretary of a military department from
maintaining, establishing, or operating a unit of the Senior
Reserve Officer Training Corps (ROTC) (in accordance with 10

U.S.C. 654 and other applicable Federal laws) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Transportation from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name.

(ii) Address.

(iii) Telephone number.

(iv) Date and place of birth.

(v) Educational level.

(vi) Academic major.

(vii) Degrees received.

(viii) Most recent educational institution enrollment.

(c) Exception. The limitation in paragraph (b) of this provision does not apply to an institution of higher education

if the Secretary of Defense determines that the institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) Representation. By submission of its offer, the offeror represents that the institution does not have any policy or practice described in paragraph (b) of this clause, unless the Secretary of Defense has determined that the institution has a long-standing policy of pacifism based on historical religious affiliation.

(End of provision)

9. Amend section 252.209-7005 by—

a. Amending the introductory text by removing "209.470-4" and adding in its place "209.470-4(b)";

b. Amending the clause date by removing "(JAN 2000)" and adding in its place "(MAR 2012)";

c. Revising introductory text of paragraph (b);

d. Removing paragraph (d);

e. Redesignating paragraph (e) as paragraph (d); and

f. Revising the introductory text of the newly redesignated paragraph (d).

The revisions read as follows:

252.209-7005 Reserve Officer Training Corps and military recruiting on campus.

* * * * *

(b) Limitation. Except as provided in paragraph (c) of this clause, the Contractor shall not, during performance of this contract, have any policy or practice that prohibits or in effect prevents—

* * * * *

(d) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the Contractor misrepresented its policies and practices at the time of contract award or has violated the prohibition in paragraph (b) of this clause—

* * * * *

10. Amend section 252.216-7000 by—

a. Amending the introductory text by removing "216.203-4-70(a)" and adding in its place "216.203-4-70(a)(1)";

b. Amending the clause date by removing "(JUL 1997)" and adding in its place "(MAR 2012)"; and

c. Revising paragraph (b) to read as follows:

252.216-7000 Economic price adjustment--basic steel, aluminum, brass, bronze, or copper mill products.

* * * * *

(b) As represented by the Contractor in its offer, the unit price stated for _____ (Identify the item) is not in excess of the Contractor's established price in effect on the date set for opening of bids (or the contract date

if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

* * * * *

11. Amend section 252.216-7003 by—

a. Amending the introductory text by removing "216.203-4-70(c)" and adding in its place "216.203-4-70(c)(1)";

b. Amending the clause date by removing "(JUN 1997)" and adding in its place "(MAR 2012)"; and

c. Revising paragraph (a) to read as follows:

252.216-7003 Economic price adjustment—wage rates or material prices controlled by a foreign government.

* * * * *

(a) As represented by the Contractor in its offer, the prices set forth in this contract—

(1) Are based on the wage rates or material prices established and controlled by the government of the country specified by the Contractor in its offer; and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

* * * * *

12. Add section 252.216-7007 to read as follows:

252.216-7007 Economic price adjustment--basic steel, aluminum, brass, bronze, or copper mill products--representation.

As prescribed in 216.203-4-70(a)(2), use the following provision:

ECONOMIC PRICE ADJUSTMENT--BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS--REPRESENTATION (MAR 2012)

(a) Definitions. The terms "established price" and "unit price," as used in this provision, have the meaning given in the clause 252.216-7000, Economic Price Adjustment--Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

(b) By submission of its offer, the offeror represents that the unit price stated in this offer for _____ (Identify the item) is not in excess of the offeror's established price in effect on the date set for opening of bids (or the contract date if this is to be a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the offeror from its catalog, list, or schedule price.

(End of provision)

13. Add section 252.216-7008 to read as follows:

252.216-7008 Economic price adjustment--wage rates or material prices controlled by a foreign government--representation.

As prescribed in 216.203-4-70(c)(2), use the following provision:

ECONOMIC PRICE ADJUSTMENT--WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT--REPRESENTATION (MAR 2012)

(a) By submission of its offer, the offeror represents that the prices set forth in this offer—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the government of _____ (Offeror insert name of host country); and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(End of provision)

14. Amend section 252.229-7003 by—

a. Amending the introductory text by removing "229.402-70(c)" and adding in its place "229.402-70(c)(1)";

b. Amending the clause date by removing "(JAN 2002)" and adding in its place "(MAR 2012)"; and

c. Revising paragraph (a) to read as follows:

252.229-7003 Tax Exemptions (Italy).

* * * * *

(a) As the Contractor represented in its offer, the contract price, including the prices in subcontracts awarded

under this contract, does not include taxes from which the United States Government is exempt.

* * * * *

15. Amend section 252.229-7005 by—

a. Amending the introductory text by removing "229.402-70(e)" and adding in its place "229.402-70(e)(1)";

b. Amending the clause date by removing "(JUN 1997)" and adding in its place "(MAR 2012)"; and

c. Revising paragraph (a) to read as follows:

252.229-7005 Tax exemptions (Spain).

* * * * *

(a) As the Contractor represented in its offer, the contract price, including the prices in subcontracts awarded under this contract, does not include taxes from which the United States Government is exempt.

* * * * *

16. Add section 252.229-7012 to read as follows:

252.229-7012 Tax exemptions (Italy)—representation.

As prescribed in 229.402-70(c)(2), use the following provision:

TAX EXEMPTIONS (ITALY)—REPRESENTATION (MAR 2012)

(a) Exemptions. The United States Government is exempt from payment of—

(1) Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies

and services sold to United States Military Commands in Italy;
and

(2) The other taxes specified in paragraph (c) of the clause DFARS 252.229-7003, Tax Exemptions (Italy).

(b) Representation. By submission of its offer, the offeror represents that the offered price, including the prices of subcontracts to be awarded under the contract, does not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(End of provision)

17. Add section 252.229-7013 to read as follows:

252.229-7013 Tax exemptions (Spain)-representation.

As prescribed in 229.402-70(e)(2), use the following clause:

TAX EXEMPTIONS (SPAIN)-REPRESENTATION (MAR 2012)

(a) Exemptions. In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the resultant contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the excise, luxury, and transaction taxes listed in paragraph (b) of the clause DFARS 252.229-7005, Tax Exemptions (Spain).

(b) Representation. By submission of its offer, the offeror represents that the offered price, including the prices of subcontracts to be awarded under the contract, does not

include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(End of provision)

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