



9110-9B

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3019 and 3052

Docket No. DHS-2018-0024

RIN 1601-AA83

**Rescinding Department of Homeland Security Acquisition Regulation (HSAR) Clause
3052.219-70, Small Business Subcontracting Plan Reporting (HSAR Case 2017-001)**

AGENCY: Office of the Chief Procurement Officer, Department of Homeland Security (DHS).

ACTION: Proposed rule.

SUMMARY: DHS is proposing to deregulate HSAR clause 3052.219-70 as the requirements of this clause duplicate the requirements in Federal Acquisition Regulation (FAR) clause 52.219-9, Small Business Subcontracting Plan. As such, HSAR clause 3052.219-70 is no longer needed to provide guidance to contractors and DHS proposes to remove the clause from the HSAR.

DATES: Interested parties should submit written comments to one of the addresses shown below on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by HSAR Case 2017-001, Rescinding HSAR clause 3052.219-70, Small Business Subcontracting Plan Reporting, using any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by entering “HSAR Case 2017-001” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “HSAR Case 2017-001.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “HSAR Case 2017-001” on your attached document.

- Fax: (202) 447-0520
- Mail: Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, ATTN: Ms. Candace Lightfoot, 245 Murray Lane, Mail Stop 0080, Washington, DC 20528.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov>, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Candace Lightfoot, Procurement Analyst, DHS, Office of the Chief Procurement Officer, Acquisition Policy and Legislation at (202) 447-0882 or email HSAR@hq.dhs.gov. When using email, include HSAR Case 2017-001 in the “Subject” line.

SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 2003, DHS published an interim final rule to establish the Department of Homeland Security Acquisition Regulation (HSAR). 68 FR 67867. On May 2, 2006, DHS published a final rule, which adopted the interim rule with some changes in response to public

comment (HSAR final rule). 71 FR 25759. The HSAR final rule finalized, among other things, HSAR clause 3052.219-70, Small Business Subcontracting Reporting Plan (48 CFR 3052.219-70). HSAR clause 3052.219-70 requires contractors to: (a) enter the information for the Subcontracting Report for Individual Contracts (formally the Standard Form 294 (SF-294)) and the Summary Subcontract Report (formally the Standard Form 295 (SF-295)) into the Electronic Subcontracting Reporting System (eSRS) at www.esrs.gov; and (b) include HSAR clause 3052.219.70 in all subcontracts that include the clause at (FAR) 48 CFR 52.219-9. The eSRS is a web-based system, which replaces the Standard Forms 294 and 295 as the mechanism for submitting reports required by the small business subcontracting program.

On June 16, 2010, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issued a final rule amending the Federal Acquisition Regulation (FAR) to require contractors' small business subcontract reports be submitted using the eSRS, rather than Standard Forms 294 and 295. 75 FR 34260; FAR Case 2005-040. This change to the FAR was issued under Federal Acquisition Circular 2005-42 of June 16, 2010. 75 FR 34291. As a result of the FAR revision HSAR clause 3052.219-70 is no longer needed to provide guidance to contractors on the eSRS requirements. Therefore, DHS is proposing to remove HSAR clause 3052.219-70 and the cross-reference to it found in paragraph (a) of 48 CFR 3019.708-70.

In addition, DHS is proposing to amend the authority citation for part 3019 to conform the authority to the Positive Law Codification of Title 41, United States code, "Public Contracts". The new codification of Title 41 was enacted on January 4, 2011.¹

¹ See Pub. L. 111-350, (Jan. 4, 2011).

II. Executive Orders 12866, 13563, and 13771

Executive Orders 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) direct agencies to assess the 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. OMB considers this rule to be an Executive Order 13771 deregulatory action. See OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). This rule is not a major rule under 5 U.S.C. 804.

There are no quantified costs or cost savings to this rule as it simply rescinds requirements that have already been shifted to the FAR. DHS believes there are non-monetized efficiency and streamlining benefits to this rule as it removes outdated provisions of the HSAR.

III. Regulatory Flexibility Act

This action rescinds HSAR clause 3052.219-70 and, as such, DHS does not expect the proposed change to result in 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.*

IV. 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).

The total hours and costs associated with existing HSAR clause 3052.219-70, as set forth in HSAR OMB Control Number, 1600-0003, Post-award Contract Information, are as follows:

Estimated Respondents:11,885

Average Responses Annually:3

Total Annual Responses:35,655

Estimated Hours:.....12

Total Hours:427,860

Hourly Rate:\$67.86

Total Costs:\$29,034,579.60

List of Subjects in 48 CFR Parts 3019 and 3052

Government procurement.

Therefore, DHS proposes to revise 48 CFR parts 3019 and 3052 as follows:

PART 3019 - SMALL BUSINESS PROGRAMS

1. Revise the authority citation for 48 CFR part 3019 to read as follows:

Authority:

5 U.S.C. 301-302, 41 U.S.C. 1702, 41 U.S.C. 1707, and 48 CFR part 1 and subpart 1.3.

2. Amend section 3019.708-70 by removing paragraph (a) and redesignating paragraph (b) as paragraph (a), and paragraph (c) as paragraph (b).

PART 3052 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for 48 CFR part 3052 continues to read as follows:

Authority:

5 U.S.C. 301-302, 41 U.S.C. 1702, 41 U.S.C. 1707, and 48 CFR part 1 and subpart 1.3

4. Remove clause 3052.219-70.

Soraya Correa

Chief Procurement Officer, Department of Homeland Security

[FR Doc. 2018-11617 Filed: 6/1/2018 8:45 am; Publication Date: 6/4/2018]