



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 247 and 252**

**[Docket DARS-2018-0041]**

**RIN 0750-AK04**

**Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Removal of Contractor's Employees" (DFARS Case 2018-D042)**

**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 remove a clause that is no longer necessary.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is amending the DFARS to remove the DFARS clause 252.247-7006, Removal of Contractor's Employees, and the associated

clause prescription at DFARS 247.270-4. The DFARS clause served as an agreement from the contractor to only use experienced, responsible, and capable people to perform the work under the stevedoring contract. The clause also advised the contractor that the contracting officer may require the contractor to remove from the job, employees who endanger persons or property or whose employment is inconsistent with the interest of military security.

## **II. Discussion and Analysis**

The information conveyed in DFARS clause 252.247-7006 is directly related to performance of the work under a stevedoring contract. It is more appropriate to define what the Government considers an experienced, responsible, and capable employee to be in a performance work statement, not a contract clause, because those requirements may change depending on various factors of the work being performed. If the need to remove employees from performing under the contract exists, it should be identified in the performance work statement. The removal and replacement of employees directly relates to the contractor's ability to perform and staff the work under the contract. As such, this DFARS clause is unnecessary and can be removed.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the

President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the Federal Register at 82 FR 35741 on August 1, 2017, and requested public input. One public comment was received on this clause. The comment recommended elimination of the clause, as it is unnecessary. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.247-7006, Removal of Contractor's Employees, and determined that the DFARS coverage was unnecessary and recommended removal.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule only removes obsolete DFARS clause 252.247-7006, Removal of Contractor's Employees. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

### **IV. Executive Orders 12866 and 13563**

E.O. 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review, 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. The Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

**V. Executive Order 13771**

This rule is not an E.O. 13771, Reducing and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

**VI. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code).

Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely removes an obsolete requirement from the DFARS.

#### **VII. Regulatory Flexibility Act**

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section VI. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

#### **VIII. 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 247 and 252

Government procurement.

**Jennifer Lee Hawes,**

Regulatory Control Officer, Defense Acquisition Regulations  
System.

Therefore, 48 CFR parts 247 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

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

### **PART 247—TRANSPORTATION**

#### **247.270-4 [Amended]**

1. Amend section 247.270-4 by—
  - a. Removing paragraph (f); and
  - b. Redesignating paragraph (g) as paragraph (f).

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

#### **252.247-7006 [Removed and Reserved]**

2. Remove and reserve section 252.247-7006.

#### **252.247-7007 [Amended]**

3. Amend section 252.247-7007, in the introductory text, by removing "247.270-4(g)" and adding "247.270-(f)" in its place.

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