



**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  
Regarding Small Business Subcontracting Plan Reporting (HSAR Case 2017-001)**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the HSAR by removing the HSAR clause regarding small business subcontracting plan reporting because the requirements of this clause duplicate the requirements in a Federal Acquisition Regulation (FAR) clause. The HSAR clause is no longer needed to provide guidance to contractors and DHS proposes to remove the clause from the HSAR.

**DATES:** *Effective Date:* [Insert date 30 days after publication in the FEDERAL REGISTER].

**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](mailto:HSAR@hq.dhs.gov) for clarification of content. When using email, include HSAR Case 2017-001 in the “Subject” line.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In a Notice of Proposed Rulemaking (NPRM) published in the Federal Register (83 FR 25638) on June 4, 2018, the Department of Homeland Security, Office of the Chief Procurement Officer, proposed to remove HSAR clause 3052.219-70 and the cross-reference to it found in paragraph (a) of 48 CFR 3019.708-70.

As explained in the NPRM, on December 4, 2003, DHS published an interim final rule to establish the Department of Homeland Security Acquisition Regulation (HSAR). 68 FR 67867 (Dec. 4, 2003). 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 (May 2, 2006). 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](http://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 (June 16, 2010). This change to the FAR was issued under Federal Acquisition Circular 2005-42 of June 16, 2010. 75 FR 34291 (June 16, 2010). 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 amending the HSAR 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 also to amending the authority citation for part 3019 to conform with the authority of the Positive Law Codification of Title 41, United States code, “Public Contracts”. The new codification of Title 41 was enacted on January 4, 2011.<sup>1</sup>

## **II. Discussion and Analysis**

Interested parties were given until July 5, 2018, to comment on the proposed changes. No public comments were submitted in response to the proposed rule. Accordingly, DHS will adopt the proposal as set forth in the NPRM without change.

## **III. 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.”

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<sup>1</sup> See Pub. L. 111-350, (Jan. 4, 2011).

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. DHS 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.

**IV. Regulatory Flexibility Act**

This action rescinds HSAR clause 3052.219-70 and, as such, DHS certifies that this final rule will not 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.*

**V. Paperwork Reduction Act**

The final 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.

For the reasons set forth above, DHS amends 48 CFR parts 3019 and 3052 as follows:

**PART 3019 - SMALL BUSINESS PROGRAMS**

1. The authority citation for 48 CFR part 3019 is revised 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.

**3019.708-70 [Amended]**

2. Section 3019.708-70 is amended by:

a. Removing paragraph (a); and

b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (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.

**3052.219-70 [Removed]**

4. Remove section 3052.219-70.

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**Soraya Correa,**

*Chief Procurement Officer, Department of Homeland Security.*

[FR Doc. 2018-28142 Filed: 12/27/2018 8:45 am; Publication Date: 12/28/2018]