



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS-2019-0029]

RIN 0750-AK11

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause, "Obligation of the Government" (DFARS Case 2018-D046)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of two other DFARS clauses on the same subject, in an effort to streamline contract terms and conditions for contractors, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018-D046, using any of the following methods:

o *Regulations.gov*: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2018-D046" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2018-D046." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2018-D046" on your attached document.

o *Email*: osd.dfars@mail.mil. Include DFARS Case 2018-D046 in the subject line of the message.

o *Fax*: 571-372-6094.

o *Mail*: Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

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 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. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

This rulemaking proposes to modify and rename DFARS clause 252.239-7013, Obligation of the Government, to: incorporate the information included in DFARS clause 252.239-7014, Term of Agreement; create an alternate for DFARS clause 252.239-7013 that is used in certain circumstances, in lieu of the basic clause, and include the information in DFARS clauses 252.239-7013, -7014, and -7015; and, amend the clause text to align with the termination notification requirement in the FAR. Combining these clauses will result in DFARS clauses 252.239-7014 and 252.239-7015 being removed from the DFARS.

II. Discussion and Analysis

When acquiring telecommunications services, contracting officers often use a basic agreement in conjunction with communication service authorizations (CSA). A basic agreement is not a contract; instead, it is a document that is negotiated between a contracting activity and a contractor and identifies the terms and conditions that will apply to any future contracts between the parties. A CSA is a contract and is used to acquire telecommunication services under a basic agreement, which is incorporated by reference in or attachment to the CSA.

DFARS clause 252.239-7013 is included in all basic agreements for telecommunications services and identifies when the Government's liability begins under a basic agreement. DFARS clauses 252.239-7014 is included in all basic agreements for

telecommunications services and specifies the term of the basic agreement, the method and timeframe necessary to terminate the basic agreement, and the contractor's obligation to continue performance on CSAs issued under the basic agreement prior to the termination notice. DFARS clause 252.239-7015 is included in basic agreements that supersede an existing basic agreement with a contractor. The clause identifies the basic agreement that is being superseded and specifies that all CSAs issued under the previous basic agreement will be modified to incorporate the terms and conditions of the new basic agreement. The clause also clarifies that current CSAs issued by the contracting activity under basic agreements other than the one identified may also be modified to incorporate the terms and conditions of the new basic agreement.

DFARS clause 252.239-7013 is included in all of the same contracts as DFARS clauses 252.239-7014 and 252.239-7015. Additionally, all three clauses provide terms and conditions that pertain to basic agreements for telecommunications services. As a result, the text of the three clauses can be combined, into a basic and alternate clause, in order minimize the number of clauses in the basic agreement, as well as streamline terms and conditions for and provide comprehensive information to contractors. This rule also changes the

termination notification timeframe from 60 to 30 days, in order to align with the requirement at FAR 16.702(b)(2).

The modification 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. No public comments were received on these clauses. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.239-7013, -7014, and -7015 and determined that the clauses could be combined.

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

This proposed rule does not create any new provisions or clauses. The rulemaking combines three existing clauses on the same topic into a basic and alternate clause and updates a

notification timeframe within the clause to comply with existing regulations. This proposed rule would not change the applicability of the affected clauses.

IV. 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.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to 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 the rule is not creating any new requirements or changing any existing requirements for contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify and rename DFARS clause 252.239-7013, Obligation of the Government, to: incorporate the information included in DFARS clause 252.239-7014, Term of Agreement; create an alternate for DFARS clause 252.239-7013 that is used in certain circumstances, in lieu of the basic clause, and include the information in DFARS clauses 252.239-7013, -7014, and -7015; and, amend the text to align with the termination notification timeframe in the FAR. Combining these clauses will result in DFARS clauses 252.239-7014 and 252.239-7015 being removed from the DFARS, pursuant to action taken by the Regulatory Reform Task Force.

The objective of this proposed rule is to streamline contract terms and conditions pertaining to telecommunications services. The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force. This rulemaking combines three existing clauses that address the same topic into a single comprehensive clause and alternate clause and updating a notification of termination timeframe to comply with existing regulation.

The Federal Procurement Data System (FPDS) does not collect information on the number of basic agreements that are negotiated or contracts and orders placed under basic agreements with contractors; instead, FPDS collects data on the orders and contracts awarded for telecommunication services, of which a percentage of those awards incorporate the terms and conditions of a basic agreement. Based on data from FPDS for fiscal years 2016, 2017, and 2018, the Government awarded approximately 24,134 contracts and orders for services under the Product and Supply Code (PSC) D3 - Information Technology and Telecommunications. Of the 24,134 contracts and orders awarded over this period, approximately 7,530, or 31 percent of the awards, were made to 3,264 unique small businesses entities (an annual average of 1,088). The PSC D3 does not break down further into information technology services and telecommunications services; therefore, the number of small business entities affected by this rule is expected to be less than the annual average of 1,088 unique small entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018-D035) in correspondence.

VII. 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 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 239 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

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

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

2. Amend section 237.7411 by revising paragraph (c) to read as follows:

239.7411 Contract clauses.

* * * * *

(c) Use the basic or alternate of the clause at 252.239-7013, Term of Agreement and Continuation of Services, in basic agreements for telecommunications services.

(1) Use the basic clause in basic agreements that do not supersede an existing basic agreement with the contractor.

(2) Use the alternate I clause in basic agreements that supersede an existing basic agreement with the contractor. Complete paragraph (c)(1) of the clause with the basic agreement number, date, and contacting office that issued the basic agreement being superseded.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 252.239-7013 to read as follows:

252.239-7013 Term of Agreement and Continuation of Services.

Basic. As prescribed in 239.7411(c)(1), use the following clause:

TERM OF AGREEMENT AND CONTINUATION OF SERVICES (DATE)

(a) This basic agreement is not a contract. The Government incurs liability only upon issuance of a communication service

authorization, which is a contract that incorporates the terms and conditions of this basic agreement.

(b) This agreement shall continue in force from year to year, unless terminated by either party by 30 days' written notice. Termination of this basic agreement does not terminate or cancel any communication service authorizations issued under this basic agreement prior to the termination.

(c) Communication service authorizations issued under this basic agreement may be modified to incorporate the terms and conditions of a new basic agreement negotiated with the Contractor.

(End of clause)

Alternate I. As prescribed in 239.7411(c)(2), use the following clause, which includes a different paragraph (c) than the basic clause and creates a paragraph (d) not in the basic clause.

TERM OF AGREEMENT AND CONTINUATION OF SERVICES (DATE)

(a) This basic agreement is not a contract. The Government incurs liability only upon issuance of a communication service authorization, which is a contract that incorporates the terms and conditions of this basic agreement.

(b) This agreement shall continue in force from year to year, unless terminated by either party by 30 days' written notice. Termination of this basic agreement does not terminate or cancel any communication service authorizations issued under this basic agreement prior to the termination.

(c) The Contractor's current communication services authorizations have been modified to incorporate the terms and conditions of this basic agreement.

(1) All current communication service authorizations issued by _____ that incorporate Basic Agreement Number _____, dated _____, are modified to incorporate this basic agreement.

(2) Current communication service authorizations, issued by the activity in paragraph (c) (1) of this clause, that incorporate other agreements with the Contractor may also be modified to incorporate this basic agreement.

(d) Communication service authorizations issued under this basic agreement may be modified to incorporate a new basic agreement with the Contractor.

(End of clause)

252.239-7014 [Removed and Reserved]

4. Remove and reserve section 252.239-7014.

252.239-7015 [Removed and Reserved]

5. Remove and reserve section 252.239-7015.

[FR Doc. 2019-13741 Filed: 6/27/2019 8:45 am; Publication Date: 6/28/2019]