



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

[Docket DARS-2019-0059]

RIN 0750-AK50

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause, "Advanced Payment Pool" (DFARS Case 2019-D013)

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 another DFARS clause on the same subject in an effort to streamline contract terms and conditions for contractors.

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 2019-D013, using any of the following methods:

- o *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Search for "DFARS Case 2019-D013." Select "Comment Now" and

follow the instructions to submit a comment. Please include "DFARS Case 2019-D013" on any attached documents.

- o *Email:* *osd.dfars@mail.mil*. Include DFARS Case 2019-D013 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 rule proposes to modify the clause at DFARS 252.232-7000, Advance Payment Pool, to incorporate the information currently included in DFARS clause 252.232-7001, Disposition of Payments, and make minor changes to simplify the clause text. Combining these clauses will result in 252.232-7001 being removed from the DFARS.

II. Discussion and Analysis

When applying for advance payments under a contract in accordance with Federal Acquisition Regulation (FAR) 32.408, contractors must provide the name and address of the financial institution, also referred to as the "disbursing office," at which the contractor will establish a special account to serve as the depository for the advance payments. FAR 32.406(b) requires the Government to use either a letter of credit or a direct Treasury check to make advance payments to a contractor, unless a waiver is obtained from the Treasury Department.

A letter of credit is issued by the Government when the contract and the contractor meet certain criteria. The letter of credit enables the contractor to withdraw Government funds from the special account to cover the contractor's own disbursements of cash for contract performance. If the contract and/or contractor cannot meet the criteria, a letter of credit is not issued, and the contractor must submit a properly certified invoice or voucher to the Government for approval. Upon approval of the invoice or voucher, a dual Treasury check is issued to the disbursing office for dissemination to the contractor's special account.

Prior to contract award and in accordance with FAR 32.4, the Government executes a determination supported by a written findings, authorization for the use of advance payment, and an

agreement identifying the terms and conditions for advance payment under the contract. FAR clause 52.232-12, Advanced Payments, is included in all solicitations and contracts under which the Government will provide advance payments. The FAR clause advises contractors that advance payment will be made via a letter of credit or submission of a properly certified and approved invoice.

DFARS clause 252.232-7000 is included in all contracts that will be subject to an advance payment pool agreement with a nonprofit organization or educational institution. The DFARS clause supplements the FAR clause by notifying contractors that advance payments will also be made in accordance with the findings, determinations, and authorization for advance payment and the terms and conditions of the advance payment pool agreement.

DFARS clause 252.232-7001, Disposition of Payments, is also included in contracts that will be subject to an advanced payment pool agreement with a nonprofit organization or educational institution, but only when advance payments will not be made by the disbursing office (i.e., when a letter of credit has not been issued under the contract and the contractor must submit an invoice or voucher in accordance with the FAR clause). The DFARS clause supplements the FAR clause by clarifying for contractors that advance payments will be made via a dual

Treasury check forwarded to the disbursing office for distribution to the contractor.

This rule proposes to combine both DFARS clauses, by adding text to DFARS clause 252.232-7000 to clarify for contractors when a dual Treasury check will be used to make payment under the contract. This information was previously included in DFARS clause 252.232-7001 and the associated prescription. By combining these clauses, DFARS clause 252.232-7001 may be removed from the DFARS.

This rule does not change any existing processes or add any new requirements for either DoD or the public. Both DFARS clauses supplement the FAR clause and clarify the terms and conditions that apply when advance payment pool agreements are authorized under the contract. As such, these DFARS clauses can be combined to streamline and consolidate the information provided to contractors regarding advanced payment pool agreements.

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 clauses 252.232-7000 and 252.232-7001 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 rule combines two clauses on the same topic into a single clause and makes minor modifications to simplify clause text. This rule does not change the applicability of the affected clauses, which are not included in solicitations and contracts that are valued at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

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:

DoD is proposing to modify the DFARS clause 252.232-7000, Advance Payment Pool, to incorporate the information currently included in DFARS clause 252.232-7001, Disposition of Payments,

and make minor changes to simplify the clause text. Combining these clauses will result in 252.232-7001 being removed from the DFARS. This rule is pursuant to action taken by the DoD Regulatory Reform Task Force.

The objective of this proposed rule is to streamline and consolidate the information provided to contractors regarding advanced payment pool agreements.

DoD does not collect data on the number of contracts awarded to small business entities that involve advanced payment pool agreements with a nonprofit organization or educational institution; therefore, DoD is unable to estimate the number of small entities that will be impacted by this rule. However, DoD does not expect small businesses entities to be significantly impacted by this rule, because the rule does not change any existing processes or impose any additional burdens. Instead, the rule streamlines and clarifies the information currently provided under the two clauses.

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 2019-D013) in correspondence.

VI. 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 232 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 232 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

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

PART 232—CONTRACT FINANCING

2. Amend section 232.412-70 by-

- a. Removing paragraph (b);
- b. Redesignating paragraph (c) as (b); and
- c. In the newly redesignated paragraph (b), removing "(See subpart 219.71)" and adding "(see subpart 219.71)" in its place.

PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 252.232-7000 by-
 - a. Removing the clause date of "(DEC 1991)" and adding "(DATE)" in its place;
 - b. In paragraph (b), removing "(insert the name of the contractor)" and adding "[insert the name of the Contractor]" in its place;
 - c. Adding paragraph (c).

The addition reads as follows:

252.232-7000 Advance payment pool.

* * * * *

(c) When a letter of credit has not been issued to the Contractor in conjunction with the contract, payment will be by a dual payee Treasury check made payable to the Contractor or the disbursing office in the Advance Payment Pool Agreement and will be forwarded to that disbursing office for appropriate disposition.

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252.232-7001 [Removed and Reserved]

- 4. Remove and reserve section 252.232-7001.

252.232-7005 [Amended]

5. Amend section 252.232-7005 in the introductory text by removing "232.412-70(c)" and adding "232.412-70(b)" in its place.

[FR Doc. 2019-23803 Filed: 10/30/2019 8:45 am; Publication Date: 10/31/2019]