



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:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending 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:** 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 published a proposed rule in the *Federal Register* at 84 FR 30988 on June 28, 2019, to rename and modify DFARS clause 252.239-7013, *Obligation of the Government*, by: (1) incorporating the information included in DFARS clause 252.239-7014, *Term of Agreement*; (2) creating an alternate for DFARS clause 252.239-7013 that is used in certain circumstances, in lieu of the basic clause, and includes the information in DFARS clauses 252.239-7013, -7014, and -7015; and, (3) amending the clause text to align with the termination notification requirement in the Federal Acquisition Regulation. As a result, DFARS clauses 252.239-7014 and 252.239-7015 are removed from the DFARS. No public comments were received in response to the proposed rule. An editorial change is made in the final rule to the clause title of DFARS 252.239-7013 to add a designation of "Basic" or "Alternate I" to the respective clause titles.

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

This 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 rule does not change the applicability of the affected clause.

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

Executive Orders (E.O.s) 12866 and E.O. 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.

### **IV. 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.

### **V. Regulatory Flexibility Act**

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to: rename DFARS clause 252.239-7013, Obligation of the Government, to include

the information 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 of 252.239-7013 to align with the termination notification timeframe in the Federal Acquisition Regulation. Combining these clauses will result in DFARS clauses 252.239-7014 and 252.239-7015 being removed from the DFARS. The objectives of this rule are to streamline contract terms and conditions pertaining to telecommunications services and update the requisite termination notification timeframe to comply with existing regulations.

The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force. No public comments were received in response to the initial regulatory flexibility analysis.

This rule is not expected 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 it is simply combining two existing clauses that address the same topic into a single comprehensive clause, and clarifies the current practices regarding DoD liability to reimburse telecommunication services contractors in certain circumstances.

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 fiscal year 2018 data from FPDS, the Government awarded approximately 8,670 contracts and orders for services to 1,787 unique entities under the product and supply code (PSC) D3 - Information Technology and Telecommunications. Of the 8,671 contracts and orders awarded, approximately 2,444 (28%) awards were made to 1,047 (59%) unique small businesses entities. The PSC D3 does not breakdown 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 1,047.

This 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 rule that would meet the stated objectives.

## **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 239 and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 239 and 252 are 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 239.7411 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.

\* \* \* \* \*

**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—BASIC (OCT 2019)

(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 uses a different paragraph (c) than the basic clause and adds a new paragraph (d).

TERM OF AGREEMENT AND CONTINUATION OF SERVICES-ALTERNATE I (OCT 2019)

(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.

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