



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 229 and 252

[Docket DARS-2019-0036]

RIN 0750-AK13

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Tax Relief" (DFARS Case 2018-D049)

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 another DFARS clause 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 48512 on September 13, 2019, to modify DFARS clause 252.229-7001, Tax Relief, to incorporate the information included in DFARS clause 252.229-7000, Invoices Exclusive of Taxes or Duties. Combining these clauses results in DFARS clause 252.229-7000 being removed from the DFARS. The rule implements a recommendation of the DoD Regulatory Reform Task Force established under Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda."

No public comments were received in response to the proposed rule. No changes from the proposed rule are made in the final rule.

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 rule combines two clauses into a single clause and does not change the applicability of the affected clauses.

III. Executive Orders 12866 and 13563

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 20, 1993. This rule is not a major rule as defined at 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:

DoD is amending DFARS clause 252.229-7001, Tax Relief, to incorporate the information included in DFARS clause 252.229-7000, Invoices Exclusive of Taxes or Duties. Combining these clauses will result in DFARS clause 252.229-7000 being removed from the DFARS. The objective of this rule is to streamline DoD contract terms and conditions and contractor responsibilities pertaining to foreign taxes and duties. The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force under E.O. 13771.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule is combines two existing clauses that address the same topic into a single comprehensive clause. These clauses apply to solicitations and contracts awarded to a foreign concern for contract performance in a foreign country.

This rule is not expected to impact small business entities because this rule only applies to foreign entities. The Small Business Administration (SBA) identifies a "small business" as a "a business entity organized for profit, with a place of business located in the United States, and which operated primarily within the United States or which makes a significant contribution to the U.S. economy through the payment of taxes or use of American products, materials, or labor" (13 CFR 121.102(a)). This rule only applies to foreign contractors, which do not meet the SBA definition of "small business" entities.

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. This rule is not expected to have a significant economic impact on small entities.

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 229 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 229 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 229 and 252 continues to read as follows:

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

PART 229—TAXES

229.402-1 [Removed]

2. Remove section 229.402-1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.229-7000 [Removed and Reserved]

3. Remove and reserve section 252.229-7000.
4. Amend section 252.229-7001 by-
 - a. In the clause heading, removing the date "(SEP 2014)" and adding "(APR 2020)" in its place;
 - b. Revising paragraph (b);

c. In Alternate I-

i. In the clause heading, removing the date of "(SEP 2014)" and adding "(APR 2020)" in its place; and

ii. Revising paragraph (b).

The revisions read as follows:

252.229-7001 Tax Relief

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(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

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Alternate I. * * *

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(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

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