



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 "Advance Payment Pool" (DFARS Case 2019-D013)

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 58364 on October 31, 2019, to include the text of DFARS clause 252.232-7001, *Disposition of Payments*, in DFARS clause 252.232-7000, *Advance Payment Pool*, and then remove DFARS clause 252.232-7001 from the DFARS. Both clauses clarify the terms and conditions that apply when advance payment pool agreements are authorized under a contract. As such, these DFARS clauses can be combined to streamline and consolidate the information provided to contractors regarding advance payment pool agreements. No public comments were received in response to the proposed rule. No changes are made in the final rule from the proposed 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 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.

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 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 modify the DFARS clause 252.232-7000, Advance Payment Pool, to incorporate the information 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. The objective of this rule is to streamline and consolidate the information provided to contractors regarding advance payment pool agreements. The modification of this DFARS clause 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 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 232 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 232 and 252 are 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

232.412-70 [Amended]

2. Amend section 232.412-70 by—
- a. Removing paragraph (b);
 - b. Redesignating paragraph (c) as paragraph (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 "(APR 2020)" 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.

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.

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