



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 251

[Docket DARS-2020-0029]

RIN 0750-AK90

**Defense Federal Acquisition Regulation Supplement: Use of
Defense Logistics Agency Energy as a Source of Fuel (DFARS Case
2020-D003)**

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 permit the use Defense Logistics Agency Energy as a source of fuel for contractors performing under certain contracts.

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 is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit contracting

officers to authorize contractors to use Defense Logistics Agency (DLA) Energy as a source for Defense Working Capital Fund fuel in the performance of other than cost-reimbursement contracts. Supplemental guidance and information, on the internal procedures a contracting officer must follow to provide this authorization, are being implemented in DFARS Procedures, Guidance, and Information.

DoD contractors provide supplies and services that require the use of ground, aviation, or marine fuels in performance of their contracts. In some instances, these supplies and services are required in locations where there are no commercial fuel sources available, the quality of fuel is degraded, or the commercial fuel supply is inadequate. As a result, the availability of reliable and quality fuel becomes critical for contract performance.

DLA Energy has a worldwide bulk-fuel supply chain that can provide military specification fuels, as well as most commercial specification ground fuels (e.g., gasoline, diesel, and heating fuel), on military bases. As an acquisition policy, Federal Acquisition Regulation (FAR) 51.1 permits contracting officers to authorize contractors to use Government supply sources in the performance of cost-reimbursement contracts.

The use of fixed-price contracts has increased as a result of statutory and policy acquisition requirements that attempt to

reduce risk to the Government. For example, 41 U.S.C. 3307(e)(4)(A)(i) requires commercial supplies and services to be acquired via fixed-price or time-and-materials contracts. As a result, many of the requirements that need to use DLA Energy ground, aviation, or marine fuels are now being awarded as fixed-price contracts and, therefore, are not eligible to authorize the use Government supply sources in performance of the contract, in accordance with FAR 51.1.

DoD mission-critical supplies and services are provided by contractors under fixed-price contracts that rely on the ability to utilize fuels for successful contract performance. As a result, this rule intends to help stabilize contractor's fuel costs and supply chain for fuel, as well as reduce contract performance risk by providing contractors with an adequate and reliable source of fuel, when applicable and necessary.

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 new provisions or clauses or impact any existing provisions or clauses.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at title

41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is updating internal operating procedures to permit and advise contracting officers on the procedures to follow when authorizing contractors, as necessary, to use DLA Energy as a source of fuel in performance of certain contracts.

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

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

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 Part 251

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 251 is amended as follows:

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

1. The authority citation for 48 CFR part 251 is revised to read as follows:

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

2. Section 252.101 is added to read as follows:

251.101 Policy.

(a) (1) Notwithstanding the restriction at FAR 51.101(a) (1), contracting officers may authorize contractors to use Defense Logistics Agency Energy as a source of fuel in performance of other than cost-reimbursement contracts, when the fuel is funded by the Defense Working Capital Fund. When providing this authorization to contractors, follow the procedures at PGI 251.101.

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