



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 229, and 252

[Docket DARS-2020-0018]

RIN 0750-AL11

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clauses Related to Taxes Applied to Foreign Contracts in Afghanistan (DFARS Case 2020-D025)

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 remove clauses related to taxes applied to foreign contracts in Afghanistan that are no longer necessary.

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

DFARS clause 252.229-7014, Taxes-Foreign Contracts in Afghanistan, is included in solicitations and contracts with performance in Afghanistan, unless DFARS clause 252.229-7015 applies. DFARS clause 252.229-7015, Taxes-Foreign Contracts in

Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement), is included in solicitations and contracts that are performed in Afghanistan and awarded on behalf of the North Atlantic Treaty Organization (NATO).

DFARS clause 252.229-7014 implements terms of the Security and Defense Cooperation Agreement between the United States and the Islamic Republic of Afghanistan (September 2014). The Agreement applies to all persons or legal entities supplying goods and services in Afghanistan to or on behalf of U.S. Forces under a contract with or in support of U.S. Forces. The clause advises contractors that the contract is subject to the Agreement and exempt from taxes or similar charges assessed in Afghanistan; requires contractors to exclude any Afghan taxes, customs, duties, fees, or similar charges from the contract price; and explains the applicability of taxes to Afghan citizens employed by DoD or DoD contractors performing under the contract.

DFARS clause 252.229-7015 implements terms of the Status of Forces Agreement (SOFA) between NATO and the Islamic Republic of Afghanistan (September 2014). The SOFA applies to all persons or legal entities supplying goods and services in Afghanistan to or on behalf of NATO forces under a contract with or in support of NATO, NATO member states, or operational partners. The clause advises contractors that the contract is subject to the SOFA and exempt from taxes or similar charges assessed in Afghanistan; requires contractors to exclude any Afghan taxes, customs, duties, fees, or similar charges from the contract

price; and explains the applicability of taxes to Afghan citizens employed by NATO performing under the contract.

Since several Federal agencies award contracts that are subject to the terms of the Agreement or SOFA, a final rule issued under FAR case 2018-023 (85 FR 67623) implemented two new clauses in the FAR that notify applicable contractors of the same information included in DFARS clauses 252.229-7014 and 252.229-7015. As the text of the DFARS clauses have been implemented in the FAR, the DFARS clauses are no longer necessary and can be removed from the DFARS.

The removal of the DFARS clauses 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. The DoD Task Force reviewed the requirements of DFARS clauses 252.229-7014 and 252.229-7015, and recommended removal, contingent upon similar

clauses being implemented in the FAR that are available for use by all Federal agencies, when applicable.

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

This rule only removes obsolete DFARS clauses 252.229-7014 and 252.229-7015. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

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

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 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 merely removing obsolete clauses from the DFARS.

IV. 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.

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 Parts 212, 229, and 252

Government procurement.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 229, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 212, 229, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

2. Amend section 212.301 by removing paragraph (f)(xii) and redesignating paragraphs (f)(xiii) through (xix) as paragraphs (f)(xii) through (xviii).

PART 229—TAXES

229.402-70 [Amended]

3. Amend section 229.402-70 by removing paragraphs (k) and (l).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.229-7014 [Removed]

4. Remove section 252.229-7014.

252.229-7015 [Removed]

5. Remove section 252.229-7015.

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