



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 247, and 252

[Docket DARS-2024-0007]

RIN 0750-AL12

Defense Federal Acquisition Regulation Supplement: Modification of Notification of Intent to Transport Supplies By Sea (DFARS Case 2020-D026)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a DFARS solicitation provision and modify the text of an existing DFARS contract clause to include the operative text of that DFARS provision.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2020-D026, using either of the following methods:

- o *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2020-D026. Select "Comment" and follow the instructions to submit a comment. Please include "DFARS

Case 2020-D026" on any attached document.

o *Email:* *osd.dfars@mail.mil.* Include DFARS Case 2020-D026 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202-913-5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to remove the solicitation provision at DFARS 252.247-7022, Representation of Extent of Transportation By Sea, and to revise the contract clause at DFARS 252.247-7023, Transportation of Supplies by Sea, accordingly, to effect the purpose of the provision using only the clause. This change will streamline instructions to contractors regarding required notifications to the Government of transportation of supplies by sea.

II. Discussion and Analysis

Currently, DFARS provision 252.247-7022 and DFARS clause 252.247-7023 are included in all solicitations with an anticipated value greater than the simplified acquisition threshold, except solicitations for direct purchase of ocean transportation services. The provision requires the offeror to

represent whether supplies will or will not be transported by sea in performance of the contract or any subcontract. The clause notifies offerors of their responsibilities when transporting supplies by sea, which include the use of U.S. flag vessels, unless certain situations apply; the submission of a certification with a final invoice; and submission of bills of lading to the contracting officer and to the U.S. Department of Transportation Maritime Administration (MARAD).

The provision's notification requirement was intended to aid acquisition personnel in carrying out their responsibilities under the clause. By effecting the notification via a solicitation provision, a representation is required from all offerors rather than just the awardee. Given the offeror's representation has no bearing on its eligibility or selection for award, the notification is better suited to be a requirement in the clause, where only the awardee must notify the contracting officer, as well as MARAD, only if transportation of supplies by sea will occur. Including MARAD on the notification provides all impacted parties with situational awareness and an ability to be proactive in ensuring compliance with the clause requirements.

Given that DFARS clause 252.247-7023 is included in nearly all contracts, and DFARS provision 252.247-7022 is associated with the requirements of 252.247-7023, the text of the clause and provision can be combined. The result reduces the number of provisions required to be used in solicitations and the number

of representations offerors must provide, while still maintaining the effect of DFARS provision 252.247-7022.

Consequent to removing DFARS clause 252.247-7022, this rule removes the clause prescription at DFARS 247.574(a) as well as direction at DFARS 204.1202 and 212.301 relating to the provision.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This rule removes the provision at DFARS 252.247-7022, along with its prescription at DFARS 247.574(a), and amends the clause at DFARS 252.247-7032 accordingly to include the substance of the provision. However, this proposed rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to apply to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This change is expected to streamline instructions to contractors regarding notifications of transportation of supplies by sea. Presently, DFARS provision 252.247-7022 is included in nearly all solicitations and DFARS clause 252.247-7023 is included in nearly all contracts. By effectively

combining the provision and the clause, this proposed rule will reduce the number of provisions required to be used in solicitations and the number of representations offerors must provide, while still maintaining the effect of DFARS provision 252.247-7022. Therefore, this proposed rule is expected to reduce administrative burden on contractors, including small businesses.

V. 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, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, 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 the rule does not create any new requirements or add to any existing requirements for

contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a solicitation provision and accordingly to modify the text of an existing DFARS contract clause to include the operative text of that DFARS provision.

The objective of this proposed rule is to streamline the instructions to contractors pertaining to the transportation of supplies by sea. The legal basis for the proposed rule is 41 U.S.C. 1303.

This proposed rule will likely affect small entities that will be awarded contract actions that include DFARS clause 252.247-7023, Transportation of Supplies by Sea. Data was obtained from the Procurement Business Intelligence Service for all contracts and modifications that include DFARS clause 252.247-7023 for fiscal years 2020 through 2022. DoD awarded on average 642,310 contract actions per year that included DFARS clause 252.247-7023 to 30,680 unique entities, of which approximately 359,315 contract awards (56 percent) were made to 21,070 unique small entities (69 percent).

The proposed rule does not impose any new reporting, recordkeeping, or compliance requirements.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternatives that would accomplish the objectives of the proposed rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2020-D026), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this proposed rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704-0245, entitled Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation and Related Clauses.

List of Subjects in 48 CFR Parts 204, 212, 247, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, 247, and 252 are proposed to be amended as follows:

1. The authority citation for parts 204, 212, 247, and 252 continue to read as follows:

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

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

204.1202 [Amended]

2. Amend section 204.1202 by removing paragraph (2) (xv) .

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

3. Amend section 212.301 by revising paragraph (f) (xxi) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(xxi) *Part 247—Transportation.*

(A) Use the clause at 252.247-7003, *Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer*, as prescribed in 247.207, to comply with section 884 of Public Law 110-417.

(B) Use the basic or one of the alternates of the clause at 252.247-7023, *Transportation of Supplies by Sea*, as prescribed in 247.574(a), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(1) Use the basic clause as prescribed in 247.574(a) (1) .

(2) Use the alternate I clause as prescribed in 247.574(a) (2) .

(3) Use the alternate II clause as prescribed in 247.574(a) (3) .

(C) Use the clause 252.247-7025, Reflagging or Repair Work, as prescribed in 247.574(b), to comply with 10 U.S.C. 2631(b).

(D) Use the provision at 252.247-7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(c), to comply with section 1017 of Public Law 109-364.

(E) Use the clause at 252.247-7027, Riding Gang Member Requirements, as prescribed in 247.574(d), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(F) Use the clause at 252.247-7028, Application for U.S. Government Shipping Documentation/Instructions, as prescribed in 247.207.

PART 247—TRANSPORTATION

247.574 [Amended]

4. Amend section 247.574—
 - a. By removing paragraph (a);
 - b. By redesignating paragraphs (b) through (e) as paragraphs (a) through (d);
 - c. In newly redesignated paragraph (a) introductory text, by removing “all”; and
 - d. In newly redesignated paragraph (d), by removing “under chapter 121 of title 46 U.S.C.” and adding “46 U.S.C. chapter 121.” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204-7007 [Amended]

5. Amend section 252.204-7007 by—
 - a. Removing the provision date of “NOV 2023” and adding “DATE” in its place; and
 - b. Removing paragraph (d)(1)(viii).

252.247-7022 [Removed and Reserved]

6. Remove and reserve section 252.247-7022.
7. Amend section 252.247-7023—
 - a. By revising the introductory text and the clause date;
 - b. By redesignating paragraphs (b) through (i) as paragraphs (c) through (j);
 - c. By adding a new paragraph (b);
 - d. In the newly redesignated paragraph (e)(2) by removing “Required shipping date” and adding “Required shipping date(s) and required delivery date(s)” in its place;
 - e. By revising the newly redesignated paragraph (f) introductory text;
 - f. By revising the newly redesignated paragraph (i);
 - g. In the newly redesignated paragraph (j) introductory text by removing “(b)(2)” and adding “(c)(2)” in its place;
 - h. In the newly redesignated paragraph (j)(1) by removing “paragraph (i)” and adding “paragraph (j)” in its place; and
 - i. In the newly redesignated paragraph (j)(2) by removing “paragraphs (a) through (e)” and “paragraph (i)” and adding

"paragraphs (a) through (f)" and "paragraph (j)" in their places, respectively.

j. In Alternate I-

i. By revising the introductory text and the clause date;

ii. By redesignating paragraphs (b) through (i) as paragraphs (c) through (j);

iii. By adding a new paragraph (b);

iv. In the newly redesignated paragraph (e) (2) by removing "Required shipping date" and adding "Required shipping date(s) and required delivery date(s)" in its place;

v. By revising the newly redesignated paragraph (f) introductory text;

vi. By revising the newly redesignated paragraph (i);

vii. In the newly redesignated paragraph (j) introductory text by removing "(b) (2)" and adding "(c) (2)" in its place;

viii. In the newly redesignated paragraph (j) (1) by removing "paragraph (i)" and adding "paragraph (j)" in its place;

ix. In the newly redesignated paragraph (j) (2) by removing "paragraphs (a) through (e)" and "paragraph (i)" and adding "paragraphs (a) through (f)" and "paragraph (j) in their places, respectively; and

x. By adding "(End of clause)" after newly redesignated paragraph (j) (2).

k. In Alternate II-

i. By revising the introductory text and the clause date;

- ii. By redesignating paragraphs (b) through (i) as paragraphs (c) through (j);
- iii. By adding a new paragraph (b);
- iv. In the newly redesignated paragraph (e) (2) by removing "Required shipping date" and adding "Required shipping date(s) and required delivery date(s)" in its place;
- v. By revising the newly redesignated paragraph (f) introductory text;
- vi. By revising the newly redesignated paragraph (i);
- vii. In the newly redesignated paragraph (j) introductory text by removing "(b) (2)" and adding "(c) (2)" in its place;
- viii. In the newly redesignated paragraph (j) (1) by removing "paragraph (i)" and adding "paragraph (j)" in its place;
- ix. In the newly redesignated paragraph (j) (2) by removing "paragraphs (a) through (e)" and "paragraph (i)" and adding "paragraphs (a) through (f)" and "paragraph (j)" in their places, respectively; and
- x. By adding "(End of clause)" after newly redesignated paragraph (j) (2).

The revisions and additions read as follows:

252.247-7023 Transportation of Supplies by Sea.

Basic. As prescribed in 247.574(a) and (a) (1), use the following clause:

TRANSPORTATION OF SUPPLIES BY SEA-BASIC (DATE)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall-

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*-

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification-

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov*, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall-

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

Alternate I. As prescribed in 247.574(a) and (a)(2), use the following clause, which uses a different paragraph (c) than the basic clause:

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE I (DATE)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall—

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*—

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD

at *Cargo.Marad@dot.gov*, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of the supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall-

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

Alternate II. As prescribed in 247.574(a) and (a)(3), use the following clause, which uses a different paragraph (c) than the basic clause:

TRANSPORTATION OF SUPPLIES BY SEA-ALTERNATE II (DATE)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall-

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*-

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov*, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award, and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of the supplies, the Contractor learns after the award of the contract that supplies will be transported by sea, the Contractor shall—

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

8. Amend section 252.247-7025-

- a. By revising the section heading; and
- b. In the introductory text by removing "247.574(c)" and adding "247.574(b)" in its place.

The revision reads as follows:

252.247-7025 Reflagging or Repair Work.

* * * * *

252.247-7026 [Amended]

9. Amend section 252.247-7026 introductory text by removing "247.574(d)" and adding "247.574(c)" in its place.

10. Amend section 252.247-7027-

- a. By revising the section heading; and
- b. In the introductory text by removing "247.574(e)" and adding "247.574(d)" in its place.

The revision reads as follows:

252.247-7027 Riding Gang Member Requirements.

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