

each year during FY 2016 through FY 2018.

This rule does not impose any new reporting, recordkeeping or other compliance requirements for small entities.

There are no known, significant alternatives that would meet the requirements of the applicable statute.

VIII. 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 219 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219 and 252 are amended as follows:

- 1. The authority citation for parts 219 and 252 continues to read as follows:

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

PART 219—SMALL BUSINESS PROGRAMS

219.811-3 [Amended]

- 2. Amend section 219.811-3 by removing “Eligible 8(a) Concerns” and adding “Eligible 8(a) Participants” wherever they appear.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 252.219-7010 by—
 - a. In the section heading, removing “Eligible 8(a) Concerns” and adding “Eligible 8(a) Participants” in its place;
 - b. In the clause heading—
 - i. Removing “Eligible 8(a) Concerns” and adding “Eligible 8(a) Participants” in its place; and
 - ii. Removing “(MAR 2016)” and adding “(OCT 2019)” in its place;
 - c. In the paragraph (a) introductory text, removing “in the SBA’s” and adding “in SBA’s” in its place;
 - d. In paragraph (a)(2), removing “by the SBA” and adding “by SBA” in its place;
 - e. In paragraph (a)(3), removing “by the SBA” and adding “by SBA” in its place;
 - e. Redesignating paragraph (d)(2) as paragraph (e); and
 - f. Revising paragraph (d).

The revision reads as follows:

252.219-7010 Notification of Competition Limited to Eligible 8(a) Participants—Partnership Agreement

* * * * *

(d)(1) Unless SBA has waived the requirements of paragraphs (d)(1)(i) through (iii) and (d)(2) of this clause in accordance with 13 CFR 121.1204, a small business concern that provides an end item it did not manufacture, process, or produce, shall—

- (i) Provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas; for kit assemblers, see paragraph (d)(2) of this clause instead;
- (ii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and
- (iii) Take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice; for example, providing storage, transportation, or delivery.

(2) When the end item being acquired is a kit of supplies, at least 50 percent of the total cost of the components of the kit shall be manufactured, processed, or produced by small businesses in the United States or its outlying areas.

(3) The requirements of paragraphs (d)(1)(i) through (iii) and (d)(2) of this clause do not apply to construction or service contracts.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS-2019-0061]

RIN 0750-AK52

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause “Protection Against Compromising Emanations” (DFARS Case 2019-D015)

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 update a reference in an existing clause.

DATES: Effective October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the clause at DFARS 252.239-7000, Protection Against Compromising Emanations, to update a reference within the clause to the current TEMPEST standard. This clause is included in solicitations and contracts involving information technology that requires protection against compromising emanations. The clause requires contractors to provide or use only information technology, as specified by the Government, that has been accredited to meet the appropriate information assurance requirements of the National Security Agency National TEMPEST standards or other standards specified by the contract. The clause further identifies NACSEM No. 5100 and NACSEM No. 5100A as examples of TEMPEST Standards. NSTISSAM TEMPEST 1-92, Compromising Emanations Laboratory Test Requirements, Electromagnetics (U) is the most current TEMPEST standard and supersedes the NACSEM standards identified in the clause. This rule updates the example provided in the clause to the current standard.

II. Discussion and Analysis

The modification of this DFARS text implements 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 this clause. The DoD Task Force reviewed the requirements of DFARS clause 252.239-7000, determined that the clause should be updated, and recommended its modification in the DFARS.

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

This rule only updates a reference in an existing clause. The rule does not impose any new requirements on

contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. 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 updating a reference in an existing clause.

V. Executive Orders 12866 and 13563

E.O. 12866 and E.O. 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.

VI. 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.

VII. 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 IV. 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.

VIII. Paperwork Reduction Act

This rule modifies a clause included in a currently approved collection under Office of Management and Budget (OMB) Control Number 0704-0341, DFARS Part 239, Acquisition of Information Technology, and associated clauses at DFARS 252.239-7000. However, this rule does not affect the requirements of the currently approved collection or add any new collection requirements that necessitate OMB approval under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 239 and 252 are amended as follows:

- 1. The authority citation for parts 239 and 252 continue to read as follows:

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

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

- 2. Amend section 239.7102-2 by revising paragraph (a) to read as follows:

239.7102-2 Compromising emanations—TEMPEST or other standard.

* * * * *

(a) The required protections, *i.e.*, an established National TEMPEST standard (*e.g.*, NSTISSAM TEMPEST 1-92) or a standard used by other authority;

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 252.239-7000 by—
 - a. Removing the clause date “(JUN 2004)” and adding “(OCT 2019)” in its place; and
 - b. Revising paragraph (a)(1) to read as follows:

252.239-7000 Protection Against Compromising Emanations.

* * * * *

(a) * * *

(1) The National Security Agency National TEMPEST Standards (NSTISSAM TEMPEST 1-92, Compromising Emanations Laboratory

Test Requirements, Electromagnetics (U)); or

* * * * *

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS-2019-0029]

RIN 0750-AK11

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause “Obligation of the Government” (DFARS Case 2018-D046)

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 two other DFARS clauses 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 October 31, 2019.

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 30988 on June 28, 2019, to rename and modify DFARS clause 252.239-7013, Obligation of the Government, by: (1) Incorporating the information included in DFARS clause 252.239-7014, Term of Agreement; (2) creating an alternate for DFARS clause 252.239-7013 that is used in certain circumstances, in lieu of the basic clause, and includes the information in DFARS clauses 252.239-7013, -7014, and -7015; and, (3) amending the clause text to align with the termination notification requirement in the Federal Acquisition Regulation. As a result, DFARS clauses 252.239-7014 and 252.239-7015 are removed from the DFARS. No public comments were received in response to the proposed rule. An editorial change is made in the final rule to the clause title of DFARS 252.239-7013 to add a designation of “Basic” or “Alternate I” to the respective clause titles.