

252.215–7015 Program Should-Cost Review.

As prescribed in 215.408(8), use the following clause:

Program Should-Cost Review (Nov 2019)

(a) The Government has the right to perform a program should-cost review, as described in Federal Acquisition Regulation (FAR) 15.407–4(b). The review may be conducted in support of a particular contract proposal or during contract performance to find opportunities to reduce program costs. The Government will communicate the elements of the proposed should-cost review to the prime contractor (Pub. L. 115–91).

(b) If the Government performs a program should-cost review, upon the Government's request, the Contractor shall provide access to accurate and complete cost data and Contractor facilities and personnel necessary to permit the Government to perform the program should-cost review.

(c) The Government has the right to use third-party experts to supplement the program should-cost review team. The Contractor shall provide access to the Contractor's facilities and information necessary to support the program should-cost review to any third-party experts who have signed non-disclosure agreements in accordance with the FAR 52.203–16.

(End of clause)

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 225 and 237**

[Docket DARS–2019–0066]

RIN 0750–AK86

Defense Federal Acquisition Regulation Supplement: Repeal of Temporary Statutory Authorities (DFARS Case 2019–D040)

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 implement a section of the National Defense Authorization Act for Fiscal Year 2019.

DATES: Effective November 27, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to partially implement section 812 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 812 repealed more than 60 obsolete Defense acquisition laws, most of which have been completed, have expired, or do not impact the contracting regulations. DoD published a final rule to repeal one statute identified in section 812 at 84 FR 12137 on April 1, 2019. This rule repeals two additional statutes, section 842(b) of the NDAA for FY 2007 (Pub. L. 109–364) and section 1010 of the USA Patriot Act of 2001 (Pub. L. 107–56).

To implement section 842(b) of the NDAA for FY 2007, DoD published a final rule at 74 FR 37626 on July 29, 2009 (DFARS Case 2008–D003). The rule established a one-time waiver authority for contracts under which specialty metals were incorporated into items produced, manufactured, or assembled in the United States prior to October 17, 2006, and where final acceptance by the Government took place after that date, but before September 30, 2010.

To implement section 1010 of the USA Patriot Act of 2001, DoD published a final rule at 67 FR 55730 on August 30, 2002 (DFARS Case 2001–D018). The rule provided an exception to the prohibition on contracting for security functions at a military installation or facility. The exception authorized DoD to award contracts to proximately located local and State governments during the period of time that United States armed forces were engaged in Operation Enduring Freedom and 180 days thereafter. Operation Enduring Freedom officially ended on December 29, 2014; therefore, this authority expired on June 26, 2015.

II. Discussion and Analysis

This rule removes the obsolete language at DFARS 225.7003–4 and 237.102–70(c) that implemented sections 842(b) and 1010, respectively.

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 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 the rule merely removes two expired authorities from the DFARS.

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

This rule removes expired authorities for contracted security functions at a military installation or facility at DFARS 237.102–70(c) and a one-time waiver of the specialty metals clause under certain circumstances at DFARS 225.7003–4. This rule does not create or revise any solicitation provisions or contract clauses.

V. Executive Orders 12866 and 13563

Executive Orders (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 III. of this preamble), the analytical requirement 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

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 225 and 237

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 237 are amended as follows:

- 1. The authority citation for 48 CFR parts 225 and 237 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION**225.7003–4 [Removed and Reserved]**

- 2. Remove and reserve section 225.7003–4.

PART 237—SERVICE CONTRACTING

- 3. Amend section 237.102–70 by—
 - a. Removing paragraph (c);
 - b. Redesignating paragraph (d) as paragraph (c);
 - c. Revising newly redesignated paragraph (c)(1) introductory text; and
 - d. In newly redesignated paragraph (c)(2), removing “PGI 237.102–70(d)” and “(d)(1)(iv) of this subsection” and adding “PGI 237.102–70(c)” and “(c)(1)(iv) of this section” in their place, respectively.

The revision reads as follows:

237.102–70 Prohibition on contracting for firefighting or security-guard functions.

* * * * *

(c)(1) Under section 332 of Public Law 107–314, as amended by section 333 of Public Law 109–364 and section 343 of Public Law 110–181, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if—

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 228 and 252**

[Docket DARS–2019–0030]

RIN 0750–AK12

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause “Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles” (DFARS Case 2018–D047)

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 clause prescription to require, instead of permit, the clause be included in applicable solicitations and contracts, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective November 27, 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 30986 on June 28, 2019, to modify the clause prescription at DFARS 228.370 to require that DFARS clause 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, be included in all solicitations and contracts, when applicable. The rule also updates the text of the clause to follow current DFARS convention regarding the use of the word “shall” to indicate a mandatory requirement or action. One respondent provided a public comment on the proposed rule.

II. Discussion and Analysis

A discussion of the comment received and the change made to the rule as a result of the comment is provided as follows:

Comment: The respondent suggested replacing the word “accident” with “mishap” throughout the clause to align with the terminology used in DoD Instruction 6055.07, “Mishap Notification, Investigation, Reporting, and Recordkeeping.”

Response: As the use of the term “mishap” has become more prevalent throughout DoD in lieu of “accident”

since the creation of the clause, and the clause is closely associated with the guidance in DoDI 6055.07, the clause title and text is updated to include the word “mishap” instead of “accident” in the final rule.

III. 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, nor does it change the applicability of the affected clause to contracts at or below the simplified acquisition threshold or to the acquisition of commercial items, including those for commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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.

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

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 amend the clause prescription at DFARS 228.370 to require that DFARS clause 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, be included in all solicitations and contracts involving the manufacture, modification, overhaul, or repair of these items; update the text of the clause to follow current DFARS convention regarding the use of the word “shall” to