

DFARS clause is used in lieu of FAR clause 52.216–18, Ordering.

The FAR clause is included in the same solicitations and contracts as the DFARS clause and advises contractors of most of the information included in the DFARS clause, except for when an order is considered issued by the Government if sent to the contractor via fax or electronic commerce. In an effort to reflect current business practices and maintain speed and efficiency in the ordering process, a final rule (85 FR 40075) issued under FAR case 2018–022 amended FAR clause 52.216–18 to automatically authorize the use of fax and electronic commerce methods to issue orders under the contract and clarify when an order is considered issued by the Government if sent to the contractor via these methods. As the FAR clause now includes the same information as the DFARS clause, DFARS clause 52.216–7006 is duplicative and no longer necessary and can be removed from the DFARS.

The removal of this DFARS clause 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 52.216–7006, Ordering, and determined that the DFARS coverage was not necessary and recommended removal, contingent upon similar language being implemented in FAR clause 52.216–18.

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 clause 52.216–7006, Ordering. 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 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 merely removing an obsolete clause 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 216 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 216 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

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

PART 216—TYPES OF CONTRACTS

216.506 [Amended]

■ 2. Amend section 216.506 by removing paragraph (a).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.216–7006 [Removed and Reserved]

■ 3. Remove and reserve section 252.216–7006.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 219 and 252

[Docket DARS–2020–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

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

ACTION: Final rule.

SUMMARY: DoD is making needed technical amendments to update the Defense Federal Acquisition Regulation Supplement (DFARS).

DATES: Effective August 31, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD (A&S) DPC (DARS), Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows to:

1. Remove section 219.303 to align with the Federal Acquisition Regulation

(FAR). Section 219.303 is now reserved in the FAR and appropriate coverage is located at FAR 19.102(b), Determining the appropriate NAICS codes for the solicitation. <https://www.govinfo.gov/content/pkg/FR-2020-02-27/pdf/2020-02028.pdf#page=23>.

2. Update the 219.5 subpart heading to align with the FAR subpart heading.

3. Revise the section 219.502–2 heading to align with the FAR coverage and renumber the section paragraph. Paragraph (a) in FAR 19.502–2 addresses acquisitions below the simplified acquisition threshold (SAT). The DFARS text addresses specific types of acquisitions at dollar values below, at, and above the SAT. The section is being renumbered to reflect implementation of the whole section (*i.e.*, FAR 19.502–2(a) and (b)), not just a single paragraph.

4. Redesignate section 219.505 as 219.502–8 to align with the FAR.

5. Update the section 219.808 heading to align with the FAR.

6. Correct cross references in the introductory text for the following clauses: 252.245–7000, 252.245–7001, 252.245–7002, and 252.245–7003.

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 48 CFR 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

219.303 [Removed]

■ 2. Remove section 219.303.

■ 3. Revise the heading for subpart 219.5 to read as follows:

Subpart 219.5—Small Business Total Set-Asides, Partial Set-Asides, and Reserves

■ 4. Revise section 219.502–2 to read as follows:

219.502–2 Total small business set-asides.

Unless the contracting officer determines that the criteria for set-aside cannot be met, set aside for small business concerns acquisitions for—

(1) Construction, including maintenance and repairs, under \$2.5 million;

(2) Dredging under \$1.5 million; and

(3) Architect-engineer services for military construction or family housing projects under \$1 million (10 U.S.C. 2855).

219.505 [Redesignated as 219.502–8]

■ 5. Redesignate section 219.505 as section 219.502–8.

219.808 [Amended]

■ 6. Amend the heading for section 219.808 by removing “negotiations” and adding “negotiation” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.245–7000 [Amended]

■ 7. Amend section 252.245–7000 introductory text by removing “245.107(1)” and adding “245.107(2)” in its place.

252.245–7001 [Amended]

■ 8. Amend section 252.245–7001 introductory text by removing “245.107(2)” and adding “245.107(3)” in its place.

252.245–7002 [Amended]

■ 9. Amend section 252.245–7002 introductory text by removing “245.107(3)” and adding “245.107(4)” in its place.

252.245–7003 [Amended]

■ 10. Amend section 252.245–7003 introductory text by removing “245.107(4)” and adding “245.107(5)” in its place.

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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 August 31, 2020.

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