

Act. For purposes of complying with any applicable requirement that is triggered by, implemented or calculated from the PSD major source baseline date, such requirement, increment, or calculation shall, for sources located within the Commonwealth of the Northern Mariana Islands, use January 13, 1997 as the PSD major source baseline date and trigger date for sulfur dioxide, PM₁₀, and nitrogen dioxide.

(b) [Reserved]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 201

RIN 0750-AI21

Defense Federal Acquisition Regulation Supplement: Contracting Officer's Representative (DFARS Case 2013-D023)

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 coverage concerning contracting officer's representative responsibilities that is procedural in nature.

DATES: Effective April 21, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Janetta Brewer, telephone 571-372-6104.

SUPPLEMENTARY INFORMATION:

I. Discussion

DoD is revising DFARS 201.602-2 to remove guidance that is internal to DoD concerning contracting officer's representative (COR) responsibilities. COR responsibilities, addressed at DFARS Procedures, Guidance, and Information (PGI) 201.602-2, are also being revised in conjunction with this DFARS change. Included in the PGI update is a link to the DoD COR Handbook, dated March 22, 2012, which provides detailed guidance on COR appointments and duties.

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

Publication of proposed regulations, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal

Acquisition Regulation. Paragraph (a)(1) of the statute 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 change is not substantive and only modifies the internal operating procedures of DoD.

III. 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, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

V. 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 Part 201

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 201 is amended as follows:

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for 48 CFR 201 continues to read as follows:

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

■ 2. Section 201.602-2 is revised to read as follows:

201.602-2 Responsibilities.

(d) Follow the procedures at PGI 201.602-2 regarding designation, assignment, and responsibilities of a contracting officer's representative (COR).

(1) A COR shall be an employee, military or civilian, of the U.S. Government, a foreign government, or a North Atlantic Treaty Organization/coalition partner. In no case shall contractor personnel serve as CORs.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 216, 247, and 252

RIN 0750-AH90

Defense Federal Acquisition Regulation Supplement: Clauses With Alternates—Transportation (DFARS Case 2012-D057)

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 revise and update transportation-related clauses and their prescriptions to create basic and alternate clauses structured in a manner to facilitate use of automated contract writing systems. The rule also includes the full text of each alternate, rather than only showing the paragraphs that differ from the basic clause.

DATES: Effective April 21, 2014.

FOR FURTHER INFORMATION CONTACT: Annette Gray, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 78 FR 48397 on August 8, 2013, to revise the presentation of DFARS part 247 clauses with alternates and their prescriptions in the DFARS. One respondent

submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment is provided below.

A. Public Comment

Comment: The respondent recommended revising the prescription for the proposed clause at 252.216–70XX (renumbered 252.216–7010 in the final rule) to include a statement that the clause applies to requirements-type contracts.

Response: DoD reviewed and accepted the public comment in the development of the final rule. In the prescription at DFARS 216.506(d) for the clause at 252.216–7010, Requirements, (formerly DFARS 252.247–7015, Requirements) the phrase “when a requirements contract is contemplated” is added.

B. Other Changes

Minor editorial changes were made: (1) To standardize language used in the final rule for the clause prescriptions and prefaces in order to provide uniform arrangement in the regulations, and (2) in 252.247–7023, to provide for consistent use of the term “foreign-flag vessels” in the clause.

III. 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, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to revise and update transportation-related clauses and their prescriptions to create basic and

alternate clauses structured in a manner to facilitate use of automated contract writing systems. The rule also includes the full text of each alternate, rather than only showing the paragraphs that differ from the basic clause.

There will be an initial small impact on potential offerors, including small businesses, because this rule provides an unfamiliar format for provision/ clause alternates in solicitations and contracts issued by DoD contracting activities. According to the Federal Procurement Data System, in Fiscal Year 2012, DoD made approximately 270,000 contract awards (not including modification and orders) that exceeded the micro-purchase threshold, of which approximately 180,000 (67%) were awarded to small businesses. It is unknown how many of these contracts were awarded that included an alternate to a DFARS provision or clause. Since similar changes are being made (by part number) to all DFARS prescriptions and clauses and these changes are not substantive, this rule is expected to result in a net savings for potential offerors, including small businesses, by increasing clarity.

No comments were received from the public on the Regulatory Flexibility analysis. No comments were received from the Chief Counsel for Advocacy of the Small Business Administration.

This rule does not add any new reporting, recordkeeping, or other compliance requirements. It should not result in any economic impact on small entities.

There are no alternatives to this rule that would attain the stated objective of making the terms of clause alternates clearer and that will facilitate the use of automated contract writing systems.

V. 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, 216, 247, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 216, 247, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 216, 247, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by revising paragraph (f)(lxv) to read as follows:

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

(f) * * *

(lxv) 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(b), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

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

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

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

* * * * *

PART 216—TYPES OF CONTRACTS

■ 3. In 216.506, revise paragraph (d) to read as follows:

216.506 Solicitation provisions and contract clauses.

* * * * *

(d) Use the basic or the alternate of the clause at 252.216–7010, Requirements, in lieu of the clause at FAR 52.216–21, Requirements, in solicitations and contracts when a requirements contract for the preparation of personal property for shipment or storage, or for the performance of intra-city or intra-area movement, is contemplated.

(1) Use the basic clause if the acquisition does not involve a partial small business set-aside.

(2) Use the alternate I clause if the acquisition involves a partial small business set-aside.

* * * * *

PART 247—TRANSPORTATION

■ 4. Revise the section 247.271 heading to read as follows:

247.271 Contracts for the preparation of personal property for shipment or storage or for performance of intra-city or intra-area movement.

* * * * *

■ 5. Amend section 247.271–3 by—

■ a. In the introductory text, removing “and for performance of intra-city or intra-area movement,” and adding “or for performance of intra-city or intra-area movement,” in its place;

■ b. Revising paragraph (a);

■ c. Removing paragraph (j) and redesignating paragraphs (k) through (p) as paragraphs (j) through (o), respectively; and

■ d. Adding a new paragraph (p).

The revision and addition read as follows:

247.271–3 Solicitation provisions, schedule formats, and contract clauses.

* * * * *

(a) Use the basic or the alternate of the provision at 252.247–7008, Evaluation of Bids.

(1) Use the basic provision when there are no “additional services” items being added to the schedule.

(2) Use the alternate I provision when adding “additional services” items to the schedule.

* * * * *

(p) See the prescription at 216.506(d) requiring the use of 252.216–7010, Requirements.

■ 6. In 247.574, revise paragraph (b) to read as follows:

247.574 Solicitation provisions and contract clauses.

* * * * *

(b) Use the basic or one of the alternates of the clause at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except those for direct purchase of ocean transportation services.

(1) Use the basic clause unless any of the supplies to be transported are commercial items that are—

(i) Shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract; or

(ii) Commissary or exchange cargoes transported outside of the Defense Transportation System when the contract is not a construction contract.

(2) Use the alternate I clause if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract.

(3) Use the alternate II clause if any of the supplies to be transported are commercial items that are commissary or exchange cargoes transported outside of the Defense Transportation System (10 U.S.C. 2643), when the contract is not a construction contract.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Add section 252.216–7010 to read as follows:

252.216–7010 Requirements.

As prescribed in 216.506(d), use one of the following clauses:

Basic. As prescribed at 216.506(d)(1), use the following clause.

REQUIREMENTS—BASIC (APR 2014)

(a) This is a requirements contract for the supplies or services specified and effective for the period stated in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government’s requirements do not result in orders in the quantities described as “estimated” or “maximum” in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

(End of clause)

Alternate I. As prescribed in 216.506(d)(2), use the following clause, which uses a different paragraph (c) than the basic clause.

REQUIREMENTS—ALTERNATE I (APR 2014)

(a) This is a requirements contract for the supplies or services specified and effective for the period stated in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government’s requirements do not result in orders in the quantities described as “estimated” or “maximum” in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) The Government’s requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

(End of clause)

■ 8. Amend section 252.247–7008 by—

■ a. Revising the introductory text, clause title and date; and

■ b. Revising Alternate I.

The revisions read as follows:

252.247-7008 Evaluation of Bids.

As prescribed in 247.271-3(a), use one of the following provisions:

Basic. As prescribed at 247.271-3(a)(1), use the following provision.

EVALUATION OF BIDS—BASIC (APR 2014)

* * * * *

Alternate I. As prescribed in 247.271-4(a)(2), use the following provision, which adds a paragraph (e) not included in the basic provision.

EVALUATION OF BIDS—ALTERNATE I (APR 2014)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as “No Charge,” or the letters “N/C” or “0,” must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be \$500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(e) Notwithstanding paragraph (a), when “additional services” are added to any schedule, such “additional services” items will not be considered in the evaluation of bids.

(End of provision)

252.247-7015 [Removed and Reserved]

■ 9. Remove and reserve section 252.247-7015.

■ 10. Amend section 252.247-7023 by—

■ a. Revising the introductory text, clause title and date;

■ b. In paragraph (a), removing the numerical paragraph designations of (1) through (7) for the definition paragraphs; and removing “*foreign flag vessel*” and adding “*foreign-flag vessel*” in its place.

■ c. In paragraph (d), removing “for use of other than U.S.-flag vessels” and adding “for use of foreign-flag vessels” in its place.

■ d. In paragraph (f) introductory text, removing “The Contractor shall” and adding “If this contract exceeds the simplified acquisition threshold, the Contractor shall” in its place; and in paragraphs (f)(3) and (4), removing “non-U.S.-flag” and adding “foreign-flag” in its place

■ e. In paragraph (g), removing “If the final invoice” and adding “If this contract exceeds the simplified acquisition threshold and the final invoice” in its place; and removing “non-U.S.-flag vessels” and adding “foreign-flag vessels” in its place.

■ f. Revising Alternate I and Alternate II; and

■ g. Removing Alternate III.

The revisions read as follows:

252.247-7023 Transportation of Supplies by Sea.

As prescribed in 247.574(b), use one of the following clauses:

Basic. As prescribed in 247.574(b)(1), use the following clause.

TRANSPORTATION OF SUPPLIES BY SEA—BASIC (APR 2014)

* * * * *

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

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE I (APR 2014)

(a) *Definitions.* As used in this clause—

Components means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

Department of Defense (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

Foreign-flag vessel means any vessel that is not a U.S.-flag vessel.

Ocean transportation means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

Supplies means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) *Supplies* includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

U.S.-flag vessel means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

- (4) Loading and discharge points;
 - (5) Name of shipper and consignee;
 - (6) Prime contract number; and
 - (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.
- (e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, one copy of the rated

- on board vessel operating carrier's ocean bill of lading, which shall contain the following information:
- (1) Prime contract number;
 - (2) Name of vessel;
 - (3) Vessel flag of registry;
 - (4) Date of loading;
 - (5) Port of loading;
 - (6) Port of final discharge;
 - (7) Description of commodity;
 - (8) Gross weight in pounds and cubic feet if available;
 - (9) Total ocean freight in U.S. dollars; and
 - (10) Name of steamship company.
- (f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this

- contract a representation that to the best of its knowledge and belief—
- (1) No ocean transportation was used in the performance of this contract;
 - (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
 - (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or
 - (4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	Item description	Contract line items	Quantity
TOTAL			

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

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

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE II (APR 2014)

(a) *Definitions.* As used in this clause—
Components means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

Department of Defense (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

Foreign-flag vessel means any vessel that is not a U.S.-flag vessel.

Ocean transportation means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

Supplies means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) *Supplies* includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

U.S.-flag vessel means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

- (i) Noncommercial items; or
- (ii) Commercial items that—
 - (A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);
 - (B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

- (1) U.S.-flag vessels are not available for timely shipment;
- (2) The freight charges are inordinately excessive or unreasonable; or
- (3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and
- (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW.,

Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;

- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.
- (f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—
 - (1) No ocean transportation was used in the performance of this contract;
 - (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	Item description	Contract line items	Quantity
TOTAL			

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750-A118

Defense Federal Acquisition Regulation Supplement: Photovoltaic Devices (DFARS Case 2014-D006)

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

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule

amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify rules of origin under trade agreements for photovoltaic devices to be utilized under covered DoD contracts, as required by a section of the National Defense Authorization Act for Fiscal Year 2011.

DATES: Effective April 21, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 78 FR 76993 on December 20, 2013, to clarify rules of origin under trade agreements for photovoltaic devices to be utilized under covered DoD contracts, as required by a section of the National Defense Authorization Act for Fiscal Year 2011. One respondent submitted a public comment in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. The interim rule was converted to a final rule without change. The one comment received related to performance of a net zero green house gas analysis, and was outside the scope of the rule.

III. 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, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 this rule will only have an impact on the determination of whether photovoltaic devices are substantially transformed in a designated country. No domestic entities will be impacted because the United States is not a designated country. For the definition of "small business," the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: "(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

V. Paperwork Reduction Act

The rule contains 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); however, these changes to the DFARS do not impose additional information