

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION**225.7008 [Removed and Reserved]**

■ 2. Section 225.7008 is removed and reserved.

225.7008–1 through 225.7008–4 [Removed]

■ 3. Sections 225.7008–1 through 225.7008–4 are removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.225–7039 [Removed and Reserved]**

■ 4. Section 252.225–7039 is removed and reserved.

[FR Doc. 05–17351 Filed 8–31–05; 8:45 am]

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DEPARTMENT OF DEFENSE**48 CFR Parts 232 and 252**

[DFARS Case 2004–D033]

Defense Federal Acquisition Regulation Supplement; Levy on Payments to Contractors

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address the effect of Internal Revenue Service (IRS) levies on contract payments. The rule requires DoD contractors to promptly notify the contracting officer if a levy that will jeopardize contract performance is imposed on a contract.

DATES: *Effective date:* September 1, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before October 31, 2005 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D033, using any of the following methods:

○ Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

○ E-mail: dfars@osd.mil. Include DFARS Case 2004–D033 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Mr. Bill Sain, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, (703) 602–0293.

SUPPLEMENTARY INFORMATION:**A. Background**

The Debt Collection Improvement Act of 1996 authorized a centralized program for the offset of Federal payments, including contract payments to collect delinquent non-tax debts owed to the Federal Government. To implement this authority, the Department of the Treasury created the Treasury Offset Program (TOP). The Taxpayer Relief Act of 1997 authorized the Internal Revenue Service to continuously levy up to 15 percent of certain Federal payments, including contract payments. To implement this authority, the Federal Payment Levy Program (FPLP) was created. The FPLP is an automated process that uses the TOP system to match delinquent tax debts with Federal payments. When a match occurs, the payment is levied and applied to the tax debt. The FPLP process works in tandem with a manual “paper” levy process outlined in 26 U.S.C. 6331–6332.

Section 887, Modification of Continuing Levy on Payments to Federal Vendors, of Public Law 108–357 amends Section 6331(h) of the Internal Revenue Code by raising the amount of levy the Government may withhold on Federal payments for goods or services sold or leased to the Federal Government, from 15 percent to 100 percent.

This interim DFARS rule is intended to address contract non-performance that may result from application of a levy.

New Contract Clause Stating Government Right To Assess Levy

While DoD has been participating in the levy program for a number of years, neither the FAR nor the DFARS includes a clause addressing levies. DoD believes that such a clause, along with implementing DFARS language in Part 232, is needed to ensure that all parties understand their rights and obligations related to the assessment of a levy.

Levies That Jeopardize Contract Performance

DoD is concerned that situations may arise in which the levy of a contract payment could jeopardize contract performance. As such, the DFARS needs to include coverage addressing the process to be followed when such situations arise.

The levy process makes it impractical, in most cases, to identify whether a levy will jeopardize contract performance prior to a contract payment being levied. While the contractor may have received a notice of potential levy, that notice does not identify which contract or contracts to which the levy will be applied. Furthermore, it is the contractor’s responsibility for identifying a levy that will significantly impact contract performance, since it is the contractor’s liability that has created the situation. Therefore, this interim rule requires that the contractor notify the contracting officer when a levy is imposed on a DoD contract payment and that the contractor state whether it believes the levy jeopardizes contract performance. In addition, the contractor is required to advise the contracting officer if the contractor is aware of any adverse effect on national security that may result from the inability to perform the contract. The contracting officer will take appropriate action on the instant contract.

When the contractor believes the levy jeopardizes contract performance, it is important that DoD have a timely process for addressing those cases. The interim rule requires the Government to promptly review the contractor’s assessment and either agree or disagree that contract performance will be jeopardized. When the Government disagrees with the contractor’s assessment, the Government will notify the contractor and no further action will be taken. When the Government agrees with the contractor’s assessment that the levy will jeopardize contract performance and also believes that the lack of performance will adversely affect national security, some or all of the monies collected will be returned to the contractor. When the Government

agrees with the contractor's assessment that the levy will jeopardize contract performance but does not believe that the lack of performance will impact national security, the Government will notify the contractor and will recommend that the contractor promptly contact the IRS to attempt to resolve the tax situation.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule 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 only applies to those contractors that have a delinquent tax debt. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004-D033.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Although the rule requires contractors to provide certain information to the Government when levies are imposed on DoD contract payments, the number of contractors that will be subject to this requirement is expected to be less than 10 per year.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule establishes DoD policy regarding levies on contract payments. The IRS has begun implementing its legislative authority to levy up to 100 percent of contract payments, up to the amount of tax debt. Such levies could jeopardize contract performance and adversely affect national security. Therefore, it is necessary to ensure that all parties understand their rights and obligations related to the assessment of a levy. Comments received in response to this

interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 237 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 237 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Subpart 232.71 is added to read as follows:

Subpart 232.71—Levies on Contract Payments

Sec.

232.7100 Scope of subpart.
232.7101 Policy and procedures.
232.7102 Contract clause.

232.7100 Scope of subpart.

This subpart prescribes policies and procedures concerning the effect of levies pursuant to 26 U.S.C. 6331(h) on contract payments. The Internal Revenue Service (IRS) is authorized to levy up to 100 percent of all payments made under a DoD contract, up to the amount of the tax debt.

232.7101 Policy and procedures.

(a) The contracting officer shall require the contractor to—

(1) Promptly notify the contracting officer when a levy that will jeopardize contract performance is imposed on a DoD contract; and

(2) Advise the contracting officer whether the inability to perform may adversely affect national security.

(b) The contracting officer shall promptly notify the Director, Defense Procurement and Acquisition Policy (DPAP), when the contractor's inability to perform will adversely affect national security or will result in significant additional costs to the Government. Follow the procedures at PGI 232.7101(b) for reviewing the contractor's rationale and submitting the required notification.

(c) The Director, DPAP, will promptly review the contractor's rationale and will notify the IRS, the contracting officer, and/or the payment office in accordance with the procedures at PGI 232.7101(c). The contracting officer shall then notify the contractor in accordance with paragraph (c) of the clause at 252.232-7010.

232.7102 Contract clause.

Use the clause at 252.232-7010, Levies on Contract Payments, in all solicitations and contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.232-7010 is added to read as follows:

252.232-7010 Levies on Contract Payments.

As prescribed in 232.7102, use the following clause:

Levies on Contract Payments (SEPT 2005)

(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the levy will jeopardize contract performance, the Contractor shall promptly notify the Procuring Contracting Officer and provide—

(1) The total dollar amount of the levy;

(2) A statement that the levy will jeopardize contract performance, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment and provide a notification to the Contractor including—

(1) A statement as to whether DoD agrees that the levy jeopardizes contract performance; and

(2) If the levy jeopardizes contract performance and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(3) If the levy jeopardizes contract performance but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of clause)

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DEPARTMENT OF DEFENSE

48 CFR Parts 237 and 252

[DFARS Case 2005-D007]

Defense Federal Acquisition Regulation Supplement; Training for Contractor Personnel Interacting With Detainees

AGENCY: Department of Defense (DoD).