

DEPARTMENT OF DEFENSE**48 CFR Parts 239 and 252**

[DFARS Case 2003–D053]

Defense Federal Acquisition Regulation Supplement; Update of Clauses for Telecommunications Services**AGENCY:** Department of Defense (DoD).**ACTION:** Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update clauses used in contracts for telecommunications services. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: November 9, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Gabrielle Ward, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2003–D053.

SUPPLEMENTARY INFORMATION:**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Deletes an obsolete clause at DFARS 252.239–7003, Facilities and Services to be Furnished—Common Carriers; and
- Expands the applicability of the clauses at DFARS 252.239–7004, Orders for Facilities and Services; 252.239–7005, Rates, Charges, and Services; and 252.239–7007, Cancellation or Termination of Orders, to all carriers of telecommunications services. The

clauses previously applied only to common carriers (those subject to Federal Communications Commission or other governmental regulation). Expansion of these clauses to all carriers reflects the current business environment, where the differences between common and noncommon carriers have become less distinct.

DoD published a proposed rule at 69 FR 67885 on November 22, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 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 the DFARS changes in this rule reflect current business practices for the acquisition of telecommunications services.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

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

■ 1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

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

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY**239.7406 [Amended]**

■ 2. Section 239.7406 is amended in paragraph (c)(6) by removing “—Common Carriers”.

239.7411 [Amended]

■ 3. Section 239.7411 is amended in paragraph (a) as follows:

- a. By removing paragraph (a)(2);
- b. By redesignating paragraphs (a)(3) through (a)(7) as paragraphs (a)(2) through (a)(6) respectively; and

■ c. In newly designated paragraphs (a)(2), (a)(3), and (a)(5), by removing “—Common Carriers”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.239–7003 [Removed and Reserved]**

■ 4. Section 252.239–7003 is removed and reserved.

252.239–7004 [Amended]

■ 5. Section 252.239–7004 is amended as follows:

- a. In the section heading, by removing “—common carriers”;
- b. In the clause title, by removing “—COMMON CARRIERS”;
- c. By revising the clause date to read “(NOV 2005)”.

252.239–7005 [Amended]

■ 6. Section 252.239–7005 is amended as follows:

- a. In the section heading, by removing “—common carriers”;
- b. In the clause title, by removing “—COMMON CARRIERS”;
- c. By revising the clause date to read “(NOV 2005)”;
- d. In paragraph (f), in the first sentence, by removing “—Common Carriers”.

252.239–7007 [Amended]

■ 7. Section 252.239–7007 is amended as follows:

- a. In the section heading, by removing “—common carriers”;
- b. In the clause title, by removing “—COMMON CARRIERS”;
- c. By revising the clause date to read “(NOV 2005)”;
- d. In paragraph (b)(1), by removing “—Common Carriers”.

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DEPARTMENT OF DEFENSE**48 CFR Parts 242 and 252**

[DFARS Case 2003–D023]

Defense Federal Acquisition Regulation Supplement; Contract Administration**AGENCY:** Department of Defense (DoD).**ACTION:** Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contract administration and audit services. This rule is a result of a transformation initiative undertaken by

DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: November 9, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2003-D023.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule:

- Deletes text that is unnecessary or duplicative of FAR policy in the areas of visits to contractor facilities; conduct of postaward conferences; review and negotiation of contractor costs and billing rates; use of contractor past performance information; and contractor internal controls.
- Deletes text on providing contract administration services to foreign governments and international organizations; coordination between corporate and individual administrative contracting officers; processing of contractor novation and change-of-name agreements; processing of voluntary refunds from contractors; and providing technical representatives at contractor facilities. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.
- Updates terminology at DFARS 242.202(a)(i)(D).
- Updates the clause at DFARS 252.242-7004, Material Management and Accounting Systems, for consistency with the policy found at DFARS 242.7203(d)(5) regarding corrective action for a contractor's

failure to make adequate progress in correcting system deficiencies.

DoD published a proposed rule at 70 FR 19043 on April 12, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 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 the rule updates, clarifies, and streamlines DFARS text, but makes no significant change to DoD contracting policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 242 and 252

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 242 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 242 and 252 continues to read as follows:

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

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 2. Section 242.002 is amended by revising paragraph (S-70)(iii) to read as follows:

242.002 Interagency agreements.

* * * * *

(S-70) * * *

(iii) Other foreign governments (including Canadian government organizations other than SSC) and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Headquarters, Defense Contract Management Agency, International and Federal Business Team. Contract administration offices provide services only upon request from

the CCP. The CCP shall follow the procedures at PGI 242.002(S-70)(iii).

■ 3. Section 242.202 is amended by revising paragraph (a)(i)(D) to read as follows:

242.202 Assignment of contract administration.

(a)(i) * * *

(D) Management and professional support services;

* * * * *

Subpart 242.4—[Removed]

■ 4. Subpart 242.4 is removed.

■ 5. Section 242.503-2 is revised to read as follows:

242.503-2 Post-award conference procedure.

DD Form 1484, Post-Award Conference Record, may be used in conducting the conference and in preparing the conference report.

242.503-3, 242.570, and 242.704 [Removed]

■ 6. Sections 242.503-3, 242.570, and 242.704 are removed.

■ 7. Section 242.705-1 is revised to read as follows:

242.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.*

(1) The corporate administrative contracting officer and individual administrative contracting officers shall jointly decide how to conduct negotiations. Follow the procedures at PGI 242.705-1(a)(1) when negotiations are conducted on a coordinated basis.

242.705-2 [Amended]

■ 8. Section 242.705-2 is amended in paragraph (b)(2)(iii) by removing the last sentence.

242.705-3, 242.801, and 242.1202 [Removed]

■ 9. Sections 242.705-3, 242.801, and 242.1202 are removed.

■ 10. Section 242.1203 is revised to read as follows:

242.1203 Processing agreements.

The responsible contracting officer shall process and execute novation and change-of-name agreements in accordance with the procedures at PGI 242.1203.

Subpart 242.15—[Removed]

■ 11. Subpart 242.15 is removed.

■ 12. Section 242.7100 is revised to read as follows:

242.7100 General.

A voluntary refund is a payment or credit (adjustment under one or more

contracts or subcontracts) to the Government from a contractor or subcontractor that is not required by any contractual or other legal obligation. Follow the procedures at PGI 242.7100 for voluntary refunds.

242.7101 and 242.7102 [Removed]

- 13. Sections 242.7101 and 242.7102 are removed.
- 14. Sections 242.7400 and 242.7401 are revised to read as follows:

242.7400 General.

(a) Program managers may conclude that they need technical representation in contractor facilities to perform non-contract administration service (CAS) technical duties and to provide liaison, guidance, and assistance on systems and programs. In these cases, the program manager may assign technical representatives under the procedures in 242.7401.

(b) A technical representative is a representative of a DoD program, project, or system office performing non-CAS technical duties at or near a contractor facility. A technical representative is not—

- (1) A representative of a contract administration or contract audit component; or
- (2) A contracting officer's representative (see 201.602).

242.7401 Procedures.

When the program, project, or system manager determines that a technical representative is required, follow the procedures at PGI 242.7401.

242.7500 and 242.7501 [Removed]

- 15. Sections 242.7500 and 242.7501 are removed.

242.7502 and 242.7503 [Redesignated]

- 16. Sections 242.7502 and 242.7503 are redesignated as sections 242.7501 and 242.7502, respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.242-7000 [Removed and Reserved]

- 17. Section 252.242-7000 is removed and reserved.
- 18. Section 252.242-7004 is amended by revising the clause date and adding paragraph (d)(4) to read as follows:

252.242-7004 Material Management and Accounting System.

* * * * *

MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (NOV 2005)

* * * * *

(d) * * *

(4) If the contractor fails to make adequate progress, the ACO must take further action. The ACO may—

- (i) Elevate the issue to higher level management;
- (ii) Further reduce progress payments and/or disallow costs on vouchers;
- (iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system; and
- (iv) Issue cautions to contracting activities regarding the award of future contracts.

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DEPARTMENT OF DEFENSE

48 CFR Part 243

[DFARS Case 2003-D024]

Defense Federal Acquisition Regulation Supplement; Contract Modifications

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contract modifications. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: November 9, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2003-D024.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or

a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule:

- Deletes unnecessary text at DFARS 243.102, 243.105(a)(ii), 243.107, and 243.204-71.
- Deletes obsolete text at DFARS 243.105(a)(i).
- Updates text at DFARS 243.107-70 for consistency with the requirements of the clause at DFARS 252.249-7002, Notification of Anticipated Contract Termination or Reduction.
- Clarifies procedures at DFARS 243.204-70 for determining if a request for equitable contract adjustment meets the dollar threshold for requiring contractor certification.

• Deletes text at DFARS 243.170, 243.171, and 243.204 containing procedures for identification of foreign military sales requirements, for obligation or deobligation of contract funds, and for review and definitization of contract change orders. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 14629 on March 23, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 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 the rule updates, clarifies, and streamlines DFARS text, but makes no significant change to DoD contracting policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*