

Subpart 222.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

222.1305 Waivers.

(c) Follow the procedures at PGI 222.1305(c) for submission of waiver requests.

222.1308 Complaint procedures.

The contracting officer shall—
(1) Forward each complaint received as indicated in FAR 22.1308; and
(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

222.1310 Solicitation provision and contract clauses.

(a)(1) Use of the clause at FAR 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, with its paragraph (c), Listing Openings, also satisfies the requirement of 10 U.S.C. 2410k.

■ 16. Section 222.1406 is revised to read as follows:

222.1406 Complaint procedures.

The contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

222.7100 and 222.7200 [Removed]

■ 17. Sections 222.7100 and 222.7200 are removed.

[FR Doc. 06-3456 Filed 4-11-06; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225, 229, and 252

[DFARS Case 2004-D012]

Defense Federal Acquisition Regulation Supplement; Prohibition of Foreign Taxation on U.S. Assistance Programs

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 implement a statutory prohibition on foreign taxation under contracts funded by U.S. assistance programs. The rule addresses the responsibilities of the contractor and the contracting officer regarding the prohibition.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Overstreet, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0310; facsimile (703) 602-0350. Please cite DFARS Case 2004-D012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 70 FR 57191 on September 30, 2005, to implement Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108-7); Section 506 of Division D of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199); and Section 506 of Division D of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447). These statutes require that a bilateral agreement providing for U.S. assistance to a foreign country must specify that the U.S. assistance shall be exempt from taxation by the foreign government. Therefore, the foreign government is prohibited from imposing taxes on commodities acquired under contracts funded by such U.S. assistance. This DFARS rule addresses the responsibilities of the contractor and the contracting officer regarding the prohibition.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim 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 administrative notification requirements of the rule are expected to affect less than 10 contracts per year.

C. Paperwork Reduction Act

The information collection requirements of the rule do not reach the threshold for requiring Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225, 229, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 225, 229, and 252, which was published at 70 FR 57191 on September 30, 2005, is adopted as a final rule without change.

[FR Doc. 06-3453 Filed 4-11-06; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

[DFARS Case 1990-037]

Defense Federal Acquisition Regulation Supplement; Incremental Funding of Fixed-Price Contracts

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

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address the use of incrementally funded fixed-price contracts. The rule contains a contract clause for use in those situations where incremental funding of fixed-price contracts is permitted.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-2022; facsimile (703) 602-0350. Please cite DFARS Case 1990-037.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises and finalizes the interim rule published at 58 FR 46091 on September 1, 1993, regarding incremental funding of fixed-price contracts. Prior to the issuance of the interim rule, incrementally funded fixed-price contracts had been used in limited situations throughout DoD for a number of years. This technique permitted DoD to award fixed-price contracts in specific circumstances

where full funding was not available and incremental funding was statutorily permitted. Use of this technique precluded the need to use a cost-type contract when the nature of the requirement was more suitable for a fixed-price contract. To implement this technique, a number of nonstandard clauses had been developed for use within the military departments and defense agencies. In recognition of the need for a standard clause for such contracts, DoD issued an interim rule to specify those situations where incremental funding of fixed-price contracts is permitted. Six sources submitted comments on the interim rule. The following is a discussion of the comments and the issues relating to the development of the final rule.

1. *Language permitting use of incremental funding.* The interim rule permitted the use of incremental funding only when the contract was funded with research and development appropriations or when Congress had otherwise authorized incremental funding. The interim rule further required that, for either base services or hazardous/toxic waste remediation contracts for which incremental funding had been authorized by Congress, the head of the contracting activity must approve the use of incremental funding. A number of respondents expressed concern regarding this language.

DoD has revised the rule to specifically address contracts for severable services. As provided for in DFARS 232.703-3, contracts crossing fiscal years, the contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year (10 U.S.C. 2410a). The public comments indicated that this provision may cause confusion with regard to the use of incremental funding for severable services. Therefore, the final rule contains a new paragraph 232.703-1(i) to specifically address incremental funding for severable services.

2. *Head of the contracting activity (HCA) approval.* The interim rule required the HCA to approve interim funding for base services and hazardous/toxic waste remediation contracts. DoD believes that the language in the final rule precludes the need for HCA approval. In those cases where incremental funding has been authorized by Congress, the contracting officer should have the flexibility to use such funding without requiring the administrative burden of obtaining HCA

approval. This is consistent with the DoD policy of empowering contracting personnel to the maximum extent practicable. The final rule is sufficient for the contracting officer to apply the requirements without further approval, as the rule specifies exactly which contracts are eligible for incremental funding. The final rule also emphasizes the preference for full funding by requiring that incrementally funded fixed-price contracts be fully funded as soon as funds are available. Therefore, the final rule eliminates the requirement for HCA approval for base services or hazardous/toxic waste remediation contracts.

3. *Work without funding.* One respondent asserted that the clause at DFARS 252.232-7007 encourages contractors to work without funding. The respondent stated that the clause is intended as a vehicle for contracting officers to circumvent the Anti-Deficiency Act.

Under the requirements of DFARS 252.232-7007, the contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination for convenience, approximates the total amount allotted to the contract; the contractor is not obligated to continue work on those items beyond that point, and the Government is not obligated to reimburse the contractor in excess of the amount allotted to the contract. The clause notifies the contractor that continuing work is at the sole risk of the contractor. Thus, the clause is not, nor is it intended to be, a vehicle for violating the Anti-Deficiency Act. Nevertheless, DoD agrees that it would be helpful to revise the language regarding continued contract performance to emphasize that the contractor is not authorized to continue work. Therefore, the final rule changes the phrase "The Contractor will not be obligated to continue work" to "The Contractor is not authorized to continue work". In addition, the final rule redesignates paragraph (i) of the clause as paragraph (j) and adds a new paragraph (i) to read "Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342."

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 has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may

be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule amends the DFARS to allow incrementally funded fixed-price contracts in certain limited, and clearly defined, situations. The objective of the rule is to encourage the full funding of contracts, while recognizing that there are specific situations where full funding is not possible, and allowing incremental funding to be used in those situations. DoD received no public comments on the initial regulatory flexibility analysis. As a result of comments received on the interim rule, the final rule contains changes that clarify the applicability of the rule and the requirements of the contract clause. The rule applies to all entities with incrementally funded fixed-priced DoD contracts. DoD believes that the rule has little or no economic impact on such entities, since the rule places little cost risk on the contractor. This is especially true of the final rule, which includes revisions that clarify that a contractor is not authorized to continue performance of a contract beyond the amount incrementally funded. The final rule maintains the clear preference for fully funded fixed-priced contracts; and requires the use of a standard clause in clearly defined and limited circumstances permitting DoD to award, and the contractor to begin work under, a contract prior to the availability of full funding. The rule requires that full funding be placed on the contract as soon as funds are available; clearly states that the contractor is not authorized to perform work beyond the available funds allotted to the contract; and provides specific protections to the contractor until full funding is made available. The rule requires the contractor to notify the contracting officer at least 90 days prior to the date when, in the contractor's best judgment, the work under the contract will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount allotted to the contract. In addition, the contractor must provide information regarding additional funding needed to continue performance. This information is the minimum needed for the Government to determine the appropriate course of action. The required information should be readily available to the contractor as part of its normal business practices. The policy in the final rule is designed to minimize any economic impact on small entities. There are no practical

alternatives to the rule. The rule is consistent with statutory requirements.

C. Paperwork Reduction Act

The information collection requirements of the clause at DFARS 252.232-7007, Limitation of Government's Obligation, have been approved by the Office of Management and Budget under Clearance Number 0704-0359 for use through December 31, 2007.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR Parts 232 and 252, which was published at 58 FR 46091 on September 1, 1993, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

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

PART 232—CONTRACT FINANCING

■ 2. Section 232.001 is added to read as follows:

232.001 Definitions.

Incremental funding means the partial funding of a contract or an exercised option, with additional funds anticipated to be provided at a later time.

■ 3. Section 232.703-1 is revised to read as follows:

232.703-1 General.

(1) A fixed-price contract may be incrementally funded only if—

(i) The contract (excluding any options) or any exercised option—

- (A) Is for severable services;
- (B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(ii) The contract uses funds available from multiple (two or more) fiscal years and—

(A) The contract is funded with research and development appropriations; or

(B) Congress has otherwise authorized incremental funding.

(2) An incrementally funded fixed-price contract shall be fully funded as soon as funds are available.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.232-7007 is amended as follows:

- a. By revising the clause date;
- b. In paragraph (b), by revising the second sentence;
- c. By revising paragraph (i); and
- d. By adding paragraph (j) to read as follows:

252.232-7007 Limitation of Government's Obligation.

* * * * *

LIMITATION OF GOVERNMENT'S OBLIGATION (APR 2006)

* * * * *

(b) * * * The Contractor is not authorized to continue work on those item(s) beyond that point. * * *

* * * * *

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract \$ _____
 (month) (day), (year) \$ _____
 (month) (day), (year) \$ _____
 (month) (day), (year) \$ _____

* * * * *

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571

[Docket No. NHTSA 2006-24455]

RIN 2127-AJ78

Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to two petitions for reconsideration of our September 2004 final rule amending the Federal motor vehicle safety standard for power-operated windows, partitions, and roof panel systems. The amendments required that switches for these windows and other items in new motor vehicles be resistant to accidental

actuation that causes those items to begin to close. The purpose of the amendments was to reduce the number of injuries and fatalities to people, especially children, that occur when they unintentionally close the power-operated items on themselves by accidentally leaning against or kneeling or standing on the switch or when other occupants accidentally actuate the switch in that manner.

The petitions for reconsideration requested that the agency adopt additional amendments. The petitions are granted in part and denied in part. In responding to the petitions' request to require "pull-up-to-close" power window switches, we are simultaneously implementing a congressional mandate to require such switches. In addition, through this document, we are amending the standard to make a number of technical amendments.

DATES: *Effective Date:* The amendments made in this final rule are effective June 12, 2006.

Compliance Date: The requirements of the September 2004 final rule, as amended by today's rule, become mandatory for all vehicles subject to the standard that are manufactured for sale in the U.S. on or after October 1, 2008. Voluntary compliance is permitted before that date.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration for this rule, your petition must be received by May 30, 2006.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VIII; Rulemaking Analyses and Notices) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards (Telephone: 202-366-2720) (Fax: 202-366-4329).

For legal issues, you may call Mr. Eric Stas, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: