(j) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.
(End of clause)

252.239–7008 [Removed and Reserved]

■ 4. Remove and reserve section 252.239–7008.

[FR Doc. 2019–19557 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS–2019–0017]

RIN 0750–AK10

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Orders for Facilities and Services'' (DFARS Case 2018–D045)

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 modify the text of an existing DFARS clause to include the text of another DFARS clause on the same subject in an effort to streamline contract terms and conditions for contractors, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 18228 on April 30, 2019, to modify the DFARS clause 252.239–7004, Orders for Facilities and Services, to incorporate the information in DFARS clause 252.239–7005, Rates, Charges, and Services, and make minor changes to simplify the clause text. Combining these clauses results in 252.239–7005 being removed from the DFARS. The rule implements a recommendation of the DoD Regulatory Reform Task Force established under Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda.''

No public comments were received in response to the proposed rule. No changes from the proposed rule are made in the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses. The rule combines two clauses into a single clause and makes minor modifications to simplify clause text. This rule does not change the applicability of the affected clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and E.O. 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. 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.

V. Regulatory Flexibility Act

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

DoD is amending DFARS clause 252.239–7004, Orders for Facilities and Services, to include the text of DFARS clause 252.239–7005, Rates, Charges, and Services. Combining these two clauses permits DFARS 252.239–7005 to be removed from the DFARS.

The objective of this rule is to streamline contract terms and conditions pertaining to telecommunications services. The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force. The modification of these DFARS clauses implements a recommendation from the DoD Regulatory Reform Task Force under E.O. 13771.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule is not expected 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 it is simply combining two existing clauses that address the same topic into a single comprehensive clause.

Based on fiscal year (FY) 2018 data from the Federal Procurement Data System, the Government awarded approximately 8,670 contracts and orders for services under the Product and Supply Code (PSC) D3—Information Technology and Telecommunications. Of the 8,670 contracts and orders awarded, approximately 28% of the awards were made to 1,050 unique small businesses entities. The PSC D3 does not breakdown further into information technology services and telecommunications services; therefore, the number of contracts and orders awarded in FY 2018 exclusively for telecommunications services is estimated to be fewer than the number awarded in FY 2018 under PSC D3 in its entirety.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the stated objectives. This rule is not expected to have a significant economic impact on small entities.

VI. 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 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

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

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

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

PART 239–ACQUISITION OF INFORMATION TECHNOLOGY

239.7411 [Amended]

■ 2. Amend section 239.7411 by—
■ a. Removing paragraph (a)(3); and

■ b. Redesignating paragraphs (a)(4) and (5) as paragraphs (a)(3) and (4), respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 252.239–7004 to read as follows:

252.239–7004 Orders for Facilities and Services.

As prescribed in 239.7411(a), use the following clause:

ORDERS FOR FACILITIES AND SERVICES (SEP 2019)

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

Governmental regulatory body means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity that creates the regulatory body are not governmental regulatory bodies.

(b) The Contractor shall acknowledge a communication service authorization or other type order for supplies and facilities by—

(1) Commencing performance after receipt of an order; or

(2) Written acceptance by a duly authorized representative.

(c) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with all applicable tariffs, rates, charges, regulations, requirements, terms, and conditions of—

(1) Service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers; or

(2) Service as lawfully established by a governmental regulatory body.

(d) The Government will not prepay for services.

(e) For nontariffed services, the Contractor shall charge the Government at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(f) Recurring charges for services and facilities shall, in each case, start with the satisfactory beginning of service or provision of facilities or equipment and are payable monthly in arrears.

(g) Expediting charges are costs necessary to get services earlier than normal. Examples are overtime pay or special shipment. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor. The Government shall pay expediting charges only when—

(1) They are provided for in the tariff established by a governmental regulatory body; or

(2) They are authorized in a communication service authorization or other contractual document.

(h) When services normally provided are technically unacceptable and the development, fabrication, or manufacture of special equipment is required, the Government may—

(1) Provide the equipment; or

(2) Direct the Contractor to acquire the equipment or facilities. If the Contractor acquires the equipment or facilities, the acquisition shall be competitive, if practicable.

(i) If at any time the Government defers or changes its orders for any of the services but does not cancel or terminate them, the amount paid or payable to the Contractor for the services deferred or modified shall be equitably adjusted under applicable tariffs filed by the Contractor with the regulatory commission in effect at the time of deferral or change. If no tariffs are in effect, the Government and the Contractor shall equitably adjust the rates by mutual agreement. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239–7005 [Removed and Reserved]

■ 4. Remove and reserve section 252.239–7005.

[FR Doc. 2019–19558 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2019–0049]

RIN 0750–AK49

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Release of Past Infringement'' (DFARS Case 2019–D012)

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 update pronouns used in a clause.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to update the pronouns used in DFARS clause 252.227.7001, Release of Past Infringement. This clause is included, when necessary, in contracts that contain patent release and settlement agreements, license agreements, and assignments. The clause addresses the release of claims or demands of certain inventions associated with the contract. Within the clause text the contractor is identified using the pronouns ''he'' or ''him.'' Current drafting convention simplifies and clarifies clause language by referring to a contractor as ''the contractor'' in clause text. This rule updates this clause to conform the text to current drafting conventions.

II. Discussion and Analysis

The modification of this DFARS text 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. One public comment was received on this clause.

Comment: The respondent advised that the clause is never used and should be deleted from the DFARS. The respondent recommended that, instead of the clause, a policy statement permitting DoD to enter into settlement agreements where patent and copyright infringement is alleged by a third party owner of a patent or copyright would suffice.

Response: DFARS clause 252.227–7001 serves as an agreement, through incorporation in the contract, between DoD and the contractor that, by execution of the contract, the contractor releases DoD from all claims and demands the contractor has (or will have) against DoD for the use or manufacture by DoD of inventions specifically covered by patents and applications identified under the contract. The clause applies to the requirements and content of the individual contract. As such, the clause is necessary, when applicable, in the contract to represent the agreement to such terms by both parties, as they relate to the specific contract. A general statement of policy does not fulfill the intent of this clause. Additionally, the clause is available for use, when applicable and necessary, and can be modified to meet particular