

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 204, 212, 247, and 252**

[Docket DARS–2024–0007]

RIN 0750–AL12

Defense Federal Acquisition Regulation Supplement: Modification of Notification of Intent To Transport Supplies by Sea (DFARS Case 2020–D026)

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 a DFARS solicitation provision and modify the text of an existing DFARS contract clause to include the operative text of that DFARS provision.

DATES: Effective October 1, 2024.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD published a proposed rule in the **Federal Register** at 89 FR 20924 on March 26, 2024, to revise the DFARS to remove the solicitation provision at DFARS 252.247–7022, Representation of Extent of Transportation By Sea, and to revise the contract clause at DFARS 252.247–7023, Transportation of Supplies by Sea, accordingly, to effect the purpose of the provision using only the clause. Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no changes from the proposed rule.

B. Analysis of Public Comments

Comment: The respondents expressed support for the rule.

Response: DoD acknowledges the respondents' support.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule removes the provision at DFARS 252.247–7022, along with its prescription at DFARS 247.574(a), and amends the clause at DFARS 252.247–7032 accordingly to include the substance of the provision. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to apply to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This change is expected to streamline instructions to contractors regarding notifications of transportation of supplies by sea. Presently, DFARS provision 252.247–7022 is included in nearly all solicitations and DFARS clause 252.247–7023 is included in nearly all contracts. By effectively combining the provision and the clause, this rule will reduce the number of provisions required to be used in solicitations and the number of representations offerors must provide, while still maintaining the effect of DFARS provision 252.247–7022. Therefore, this rule is expected to reduce administrative burden on contractors, including small businesses.

V. 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, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of

Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. 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:

DoD is amending the DFARS to remove a solicitation provision and accordingly to modify the text of an existing DFARS contract clause to include the operative text of that DFARS provision. The objective of this rule is to streamline the instructions to contractors pertaining to the transportation of supplies by sea.

Public comments received in response to the proposed rule raised no issues regarding the initial regulatory flexibility analysis.

This rule will likely affect small entities that will be awarded contract actions that include DFARS clause 252.247–7023, Transportation of Supplies by Sea. Data was obtained from the Procurement Business Intelligence Service for all contracts and modifications that include DFARS clause 252.247–7023 for fiscal years 2020 through 2022. DoD awarded on average 642,310 contract actions per year that included DFARS clause 252.247–7023 to 30,680 unique entities, of which approximately 359,315 contract awards (56 percent) were made to 21,070 unique small entities (69 percent).

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

There are no known significant alternatives that would accomplish the objectives of the rule.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0245, entitled Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation and Related Clauses.

List of Subjects in 48 CFR Parts 204, 212, 247, and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR parts 204, 212, 247, and 252 as follows:

■ 1. The authority citation for parts 204, 212, 247, and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

204.1202 [Amended]

■ 2. Amend section 204.1202 by removing paragraph (2)(xv).

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

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

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

* * * * *

(f) * * *

(xxi) *Part 247—Transportation.* (A) Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in 247.207, to comply with section 884 of Public Law 110–417.

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

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

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

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

(C) Use the clause 252.247–7025, Reflagging or Repair Work, as prescribed in 247.574(b), to comply with 10 U.S.C. 2631(b).

(D) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(c), to comply with section 1017 of Public Law 109–364.

(E) Use the clause at 252.247–7027, Riding Gang Member Requirements, as

prescribed in 247.574(d), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

(F) Use the clause at 252.247–7028, Application for U.S. Government Shipping Documentation/Instructions, as prescribed in 247.207.

PART 247—TRANSPORTATION

247.574 [Amended]

■ 4. Amend section 247.574—

- a. By removing paragraph (a);
- b. By redesignating paragraphs (b) through (e) as paragraphs (a) through (d);
- c. In newly redesignated paragraph (a) introductory text by removing “all”; and
- d. In newly redesignated paragraph (d) by removing “under chapter 121 of title 46 U.S.C.” and adding “46 U.S.C. chapter 121.” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7007 [Amended]

- 5. Amend section 252.204–7007—
- a. By removing the provision date of “NOV 2023” and adding “OCT 2024” in its place; and
- b. By removing paragraph (d)(1)(viii).

252.247–7022 [Removed and Reserved]

- 6. Remove and reserve section 252.247–7022.
- 7. Amend section 252.247–7023—
- a. By revising the introductory text and the clause date;
- b. By redesignating paragraphs (b) through (i) as paragraphs (c) through (j);
- c. By adding a new paragraph (b);
- d. By revising newly redesignated paragraphs (e)(2), (f) introductory text, and (i);
- e. In newly redesignated paragraph (j) introductory text by removing “(b)(2)” and adding “(c)(2)” in its place;
- f. In newly redesignated paragraph (j)(1) by removing “paragraph (i)” and adding “paragraph (j)” in its place;
- g. In newly redesignated paragraph (j)(2) by removing “paragraphs (a) through (e)” and “paragraph (i)” and adding “paragraphs (a) through (f)” and “paragraph (j)” in their places, respectively;
- h. In Alternate I—
- i. By revising the introductory text and the clause date;
- ii. By redesignating paragraphs (b) through (i) as paragraphs (c) through (j);
- iii. By adding a new paragraph (b);
- iv. By revising newly redesignated paragraphs (e)(2), (f) introductory text, and (i);

- v. In newly redesignated paragraph (j) introductory text by removing “(b)(2)” and adding “(c)(2)” in its place;
- vi. In newly redesignated paragraph (j)(1) by removing “paragraph (i)” and adding “paragraph (j)” in its place;
- vii. In the newly redesignated paragraph (j)(2) by removing “paragraphs (a) through (e)” and “paragraph (i)” and adding “paragraphs (a) through (f)” in their places, respectively; and
- viii. By adding “(End of clause)” after newly redesignated paragraph (j)(2); and
- i. In Alternate II—
- i. By revising the introductory text and the clause date;
- ii. By redesignating paragraphs (b) through (i) as paragraphs (c) through (j);
- iii. By adding a new paragraph (b);
- iv. By revising newly redesignated paragraphs (e)(2), (f) introductory text, and (i);
- v. In newly redesignated paragraph (j) introductory text by removing “(b)(2)” and adding “(c)(2)” in its place;
- vi. In newly redesignated paragraph (j)(1) by removing “paragraph (i)” and adding “paragraph (j)” in its place;
- vii. In newly redesignated paragraph (j)(2) by removing “paragraphs (a) through (e)” and “paragraph (i)” and adding “paragraphs (a) through (f)” and “paragraph (j)” in their places, respectively; and
- viii. By adding “(End of clause)” after newly redesignated paragraph (j)(2).

The revisions and additions read as follows:

252.247–7023 Transportation of Supplies by Sea.

As prescribed in 247.574(a) and (a)(1), use the following basic clause:

Transportation of Supplies by Sea—Basic (OCT 2024)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall—

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*—

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

- (i) A statement of the Contractor’s intent to transport supplies by sea;
- (ii) The contract number; and
- (iii) The task-order or delivery-order number, when applicable.

* * * * *

(e) * * *

(2) Required shipping date(s) and required delivery date(s);

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov*, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall—

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

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

Transportation of Supplies by Sea—Alternate I (OCT 2024)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall—

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*—

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

* * * * *

(e) * * *

(2) Required shipping date(s) and required delivery date(s);

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov*, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading,

which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of the supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall—

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

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

Transportation of Supplies by Sea—Alternate II (OCT 2024)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall—

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*—

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

* * * * *

(e) * * *

(2) Required shipping date(s) and required delivery date(s);

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov*, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award, and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of the supplies, the Contractor learns after the award of the

contract that supplies will be transported by sea, the Contractor shall—

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

8. Amend section 252.247–7025—

■ a. By revising the section heading; and

■ b. In the introductory text by removing “247.574(c)” and adding “247.574(b)” in its place.

The revision reads as follows:

252.247–7025 Reflagging or Repair Work.

* * * * *

252.247–7026 [Amended]

■ 9. Amend section 252.247–7026 in the introductory text by removing “247.574(d)” and adding “247.574(c)” in its place.

■ 10. Amend section 252.247–7027—

■ a. By revising the section heading; and

■ b. In the introductory text by removing “247.574(e)” and adding “247.574(d)” in its place.

The revision reads as follows:

252.247–7027 Riding Gang Member Requirements.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 242, 247, and 252

[Docket DARS–2024–0013]

RIN 0750–AL38

Defense Federal Acquisition Regulation Supplement: Preference for United States Vessels in Transporting Supplies By Sea (DFARS Case 2021–D020)

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 implement a section of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 intended to increase compliance with military cargo preference requirements.