

■ 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]

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## 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

circumstances for the specific requirement, with consultation with cognizant patent or legal counsel.

This clause is beneficial to DoD by facilitating a standard and uniform incorporation of more common terms and conditions associated with patent and license agreements and assignments into applicable contracts, without having to draft the language of these more common terms and conditions with each contract. This approach also ensures the same language is incorporated into each contract, which helps DoD avoid miscommunications or misunderstanding and maintain consistency in negotiating such terms and conditions DoD-wide.

The DoD Regulatory Reform Task Force reviewed the requirements of DFARS clause 252.227–7001 and determined that the DFARS clause should only be updated to conform to current drafting standards.

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

This rule only updates pronouns used in DFARS clause 252.227–7001. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

### IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely updates the contact information already provided for in existing clauses.

### V. Executive Orders 12866 and 13563

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, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### VI. 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.

### VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

### VIII. 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 Part 252

Government procurement.

Jennifer Lee Hawes,  
Regulatory Control Officer, Defense  
Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 1. The authority citation for part 252 continues to read as follows:

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

#### 252.227–7001 [Amended]

- 2. Amend section 252.227–7001 by—
  - a. Removing the clause date of “(AUG 1984)” and adding “(SEP 2019)” in its place; and
  - b. In the clause text, removing “which he”, “acquired by him”, and

“(description of subject matter)” and adding “which the Contractor”, “acquired by the Contractor”, and “[description of subject matter]” in their places, respectively.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

[Docket DARS–2019–0055]

RIN 0750–AK53

### Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause “Trade Agreements” (DFARS Case 2019–D016)

**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 a paragraph citation in DFARS clause 252.225–7021, Trade Agreements.

**DATES:** Effective September 13, 2019.

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

#### SUPPLEMENTARY INFORMATION:

#### I. Background

This final rule amends DFARS clause 252.225–7021, Trade Agreements, to update an outdated citation in paragraph (e) of the basic clause and paragraph (f) of the alternate II clause. The DFARS clause is included in solicitations and contracts for the acquisition of supplies subject to the World Trade Organization Government Procurement Agreement. The clause: Provides pertinent definitions and country listings for designated and qualifying countries; requires contractors to deliver only U.S.-made, qualifying country, or designated country end items, unless otherwise stated in the contract; prohibits the contract price from including duty for products for which the contractor will claim duty-free entry; and provides information on applicable sections of the Harmonized Tariff Schedule of the United States (HTSUS).

Paragraph (e) of the basic clause and paragraph (f) of the alternate II clause provide a link to the HTSUS and identify specific sections of the Schedule that provide more information