

Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;

- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.
- (f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—
  - (1) No ocean transportation was used in the performance of this contract;
  - (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	Item description	Contract line items	Quantity
TOTAL .....			

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

**RIN 0750-A118**

**Defense Federal Acquisition Regulation Supplement: Photovoltaic Devices (DFARS Case 2014-D006)**

**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 clarify rules of origin under trade agreements for photovoltaic devices to be utilized under covered DoD contracts, as required by a section of the National Defense Authorization Act for Fiscal Year 2011.

**DATES:** Effective April 21, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, telephone 571-372-6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published an interim rule in the **Federal Register** at 78 FR 76993 on December 20, 2013, to clarify rules of origin under trade agreements for photovoltaic devices to be utilized under covered DoD contracts, as required by a section of the National Defense Authorization Act for Fiscal Year 2011. One respondent submitted a public comment in response to the interim rule.

**II. Discussion and Analysis**

DoD reviewed the public comment in the development of the final rule. The interim rule was converted to a final rule without change. The one comment received related to performance of a net zero green house gas analysis, and was outside the scope of the rule.

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

**IV. 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 this rule will only have an impact on the determination of whether photovoltaic devices are substantially transformed in a designated country. No domestic entities will be impacted because the United States is not a designated country. For the definition of "small business," the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: "(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

**V. Paperwork Reduction Act**

The rule contains 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); however, these changes to the DFARS do not impose additional information

collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0229, entitled Defense Federal Acquisition Regulation Supplement (DFARS); Part 225, Foreign Acquisition.

#### List of Subjects in 48 CFR Part 252

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

#### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR part 252, which was published at 78 FR 76993 on December 20, 2013, is adopted as a final rule without change.

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### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Part 252

RIN 0750-A102

#### Defense Federal Acquisition Regulation Supplement: Clauses With Alternates—Contract Financing (DFARS Case 2013-D014)

**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) as part of a project to review clauses with alternates to create basic and alternate clauses structured in a manner to facilitate use of automated contract writing systems. This final rule addresses a contract financing clause.

**DATES:** Effective April 21, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ms. Annette Gray, telephone 571-372-6093.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published a proposed rule in the *Federal Register* at 78 FR 48404 on August 8, 2013, to amend the DFARS to revise the presentation in the DFARS of a part 232 contract financing clause with an alternate. The rule also proposed to add a separate prescription for the basic clause as well as the alternate. No public comments were submitted in response to the proposed rule.

##### II. Discussion

This final rule addresses the single DFARS part 232 clause that has an alternate, 252.232-7007, Limitation of Government's Obligation. In developing the final rule, DoD determined that the need for an alternate to the basic clause could be eliminated by making a minor change to paragraph (a) of the basic clause. The only difference between the basic clause and the alternate is the number of line items subject to incremental funding, which is information inserted by the contracting officer into paragraph (a) of the basic clause or the alternate clause. In the final rule, the alternate clause is being eliminated in its entirety as a result of an editorial change made to paragraph (a) of the basic clause. This change enables the contracting officer to tailor and use the basic clause, whether a single line item or multiple line items are being incrementally funded.

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

##### IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been performed and is summarized as follows:

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.232-7007, Limitation of Government's Obligation. Paragraph (a) of clause 252.232-7007 is being modified to be used for single or multiple line items that are to be incrementally funded. The modification of paragraph (a) in the basic clause eliminates the need for an alternate clause; therefore the alternate clause is removed by this final rule.

The public did not raise any issues in response to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy of the Small Business Administration did not submit any comments in response to the rule.

Potential offerors, including small businesses, may be affected by this rule by seeing an unfamiliar format for this part 232 clause. According to the Federal Procurement Data System, in fiscal year 2012, DoD made approximately 270,000 contract awards (not including modification and orders) that exceeded the micro-purchase threshold, of which approximately 180,000 (67%) were awarded to small businesses. It is unknown how many of these contracts were awarded that included incremental funding. Nothing substantive will change in solicitations or contracts for potential offerors. The overall burden caused by this rule is expected to be negligible, and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. No alternatives were identified that will accomplish the objectives of the rule.

##### V. 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.

**Manuel Quinones,**

*Editor, 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 48 CFR part 252 continues to read as follows:

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

■ 2. Amend section 252.232-7007 by—

■ a. Removing the clause date “(MAY 2006)” and adding “(APR 2014)” in its place;

■ b. Revising paragraph (a); and

■ c. Removing Alternate I.

The revision reads as follows.

#### 252.232-7007 Limitation of Government's obligation.

\* \* \* \* \*

(a) Contract line item(s) [Contracting Officer insert after negotiations] is/are incrementally funded. For this/these item(s), the sum of \$ \_\_\_ [Contracting Officer insert after negotiations] of the total price is presently available for payment and allotted