



(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750-AI12

**Defense Federal Acquisition Regulation Supplement: Removal of
DFARS Coverage on Contractors Performing Private Security
Functions (DFARS Case 2013-D037)**

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 coverage on contractors performing private security functions that is now covered in the FAR.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, telephone 571-372-6098.

SUPPLEMENTARY INFORMATION:

I. Background

DoD implemented section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (Pub. L. 110-181), as amended by section 853 of the NDAA for FY 2009 (Pub. L.

110-417) and sections 831 and 832 of the NDAA for FY 2011 (Pub. L. 111-383), at DFARS section 225.370 and the clause at 252.225-7039, both entitled "Contractors Performing Private Security Functions." The DFARS interim rule was published at 76 FR 52133, effective August 19, 2011, and the final rule was published at 77 FR 35883 on June 15, 2012.

These same statutory provisions were subsequently implemented in the FAR at 25.302 and 52.225-26, both entitled "Contractors Performing Private Security Functions Outside the United States," in FAC 2005-067, issued June 21, 2013. The FAR changes regarding private security contractors were effective on July 22, 2013 (see 78 FR 37670). Therefore, there is no need to retain the duplicative DFARS coverage applicable solely to DoD.

This final rule removes DFARS 225.370 and the clause at 252.225-7039, effective upon publication. In all applicable cases (see FAR 25.302-3, Applicability), the FAR shall be used.

II. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute 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 DFARS 225.370 and the clause at 252.225-7039 are duplicative of the FAR. Using the FAR clause instead of the DFARS clause should, in effect, be transparent to contractors because the requirements are the same for both clauses.

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

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at DFARS 225.370 and 252.225-7039, currently approved under OMB Control Number 0704-0460, titled Synchronized Predeployment and Operational Tracker (SPOT) System, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The information collection requirements associated with OMB 0704-0460 are broader than those applicable only to private security contractors, and the majority of the 0704-0460 requirements (i.e., those not associated with private security contractors) will continue to apply to DoD contractors under the clause at DFARS 252.225-7040. The information collection requirements associated with contractor employees performing private security functions will continue to apply to DoD contracts in accordance with the clause at FAR 52.225-26 (which cites to OMB 0704-0460). The information collection requirements for private security contractors under contracts with non-DoD agencies are addressed under a separate information collection, 9000-0180. There is no net impact of this final

rule on the information collection requirements for OMB 0704-0460.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

225.370 [Removed]

2. Remove section 225.370.

252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7039 [Removed and Reserved]

3. Remove and reserve section 252.225-7039.

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