

**PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

**203.104-4 [Removed]**

2. Section 203.104-4 is removed.

**203.104-5 [Amended]**

3. Section 203.104-5 is amended by redesignating paragraph (e)(4) as (d)(4); and revising, in newly redesignated paragraph (d)(4), the reference "FAR 3.104-5(e)(4)" to read "FAR 3.104-5(d)(4)".

**203.170 through 203.170-4 [Removed]**

4. Sections 203.170 through 203.170-4 are removed.

**PART 215—CONTRACTING BY NEGOTIATION**

5. Section 215.608 is amended by revising the last sentence of paragraph (b) to read as follows:

**215.608 Proposal evaluation.**

\* \* \* \* \*

(b) \* \* \* Determinations based on violations or possible violations of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.203-7000 [Removed and reserved]**

6. Section 252.203-7000 is removed and reserved.

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BILLING CODE 5000-04-M

**48 CFR Parts 215, 219, 225, 226, 227, 233, and 252**

[DFARS Case 96-D306]

**Defense Federal Acquisition Regulation Supplement; Elimination of Certifications**

AGENCY: Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove particular certification requirements for contractors and offerors that are not specifically imposed by statute.

**EFFECTIVE DATE:** January 17, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Mutty, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062, Telephone (703) 602-0131. Telefax (703) 602-0350. Please cite DFARS Case 96-D306 in all correspondence related to this case.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends DFARS Parts 215, 219, 225, 226, 227, 233, and 252 to remove particular certification requirements for contractors and offerors. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). Section 4301(b) requires the head of each executive agency, that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute, to issue for public comment a proposal to remove from the agency regulations those certification requirements that are not specifically imposed by statute. The head of the agency can omit such a certification from its proposal only if: (1) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (2) the head of the executive agency approves in writing the retention of such certification requirement. A proposed rule was

published in the Federal Register on September 6, 1996 (61 FR 47101). Eighteen comments were received from four respondents. All comments were considered in the development of the final rule.

In response to the public comments, DFARS 215.873(d) was revised to replace "furnishes any certification" with "identifies any such data" to avoid any potential misinterpretation that a certification not specifically required by statute or regulation is permitted. Additionally, the language at DFARS 252.236-7006(c) was revised to more clearly define the requirement for offerors to indicate that proposed items, subject to cost limitations, include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

Several certifications for contractors and offerors associated with Foreign Contracting had been proposed for elimination. However, upon consideration of public comments received in response to the proposed rule, these certifications are being proposed for retention, because the self-policing discipline of a certification requirement is important to enforcing a national policy grounded in vital economic and security interests. The Government believes that elimination of these certification requirements would have created a need for offerors to submit more detailed information regarding the origin of offered products. Therefore, the certification is viewed as a less burdensome alternative. Interested parties are invited to submit comments on the retention of these certification requirements. Please cite Holding File 96-708-02, Regulatory Reform—Certifications DFARS, in correspondence. Comments should be limited to the retention of the following certifications for contractors and offerors that were proposed for elimination but have been retained as a result of the analysis of public comments:

DFARS Cite	Clause/provision No.	Title
225.109 .....	252.225-7000	Buy American Act—Balance of Payments Program Certificate.
225.408 .....	252.225-7006	Buy American Act—Trade Agreements—Balance of Payments Program Certificate.
225.408 .....	252.225-7035	Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

**B. Regulatory Flexibility Act**

This final rule is expected to have a significant beneficial 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 reduces the number of certifications that offerors and contractors must provide to the Government. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and may be obtained from the

address specified herein. A copy of the FRFA has been submitted to the Chief Council for Advocacy of the Small Business Administration. The analysis is summarized as follows:

The objective and legal basis for this rule is Section 4301(b) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). The rule implements Section 4301(b) by amending the DFARS to remove certain certification requirements for contractors and offerors that are not specifically imposed by statute. There were no public comments received in response to the initial regulatory flexibility analysis. Certifications relating to the Buy American Act, Trade Agreements Act, and North American Free Trade Agreement Implementation Act were originally proposed for elimination. However, upon consideration of public comments received in response to the proposed rule, these certifications were retained. The rule will apply to all large and small entities that are interested in receiving Government contracts. The number of small entities to which the rule will apply is estimated to be 20,378. This rule does not impose any reporting, recordkeeping, or other compliance requirements. Flexible compliance was considered but determined inappropriate because the rule eliminates, rather than imposes, certification burdens on large and small entities.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the final rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 215, 219, 225, 226, 227, 233, and 252

Government procurement.

Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 215, 219, 225, 226, 227, 233, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 215, 219, 225, 226, 227, 233, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 215—CONTRACTING BY NEGOTIATION**

2. Section 215.873 is amended by revising paragraph (d) to read as follows:

**215.873 Estimated data prices.**

\* \* \* \* \*

(d) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

**PART 219—SMALL BUSINESS PROGRAMS**

3. Section 219.301 is amended by revising paragraph (b) to read as follows:

**219.301 Representation by the offeror.**

\* \* \* \* \*

(b) The contracting officer shall protest an offeror's representation that it is a small disadvantaged business concern when—

- (i) There is conflicting evidence;
- (ii) The offeror represents that the Small Business Administration previously determined the concern to be non-disadvantaged; or
- (iii) The offeror represents its ownership as other than Black American, Hispanic American, Native American (including Indian tribes and Native Hawaiian organizations), Asian Pacific American, or subcontinent Asian American, unless the offeror represents that—

(A) It currently is in the Section 8(a) program; or

(B) Within the 6 months preceding submission of its offer, the offeror was determined by the Small Business Administration to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

4. Section 219.302-70 is amended by revising paragraphs (d) and (e) to read as follows:

**§ 219.302-70 Protesting a small disadvantaged business representation.**

\* \* \* \* \*

(d) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW., Washington, DC 20416. Send SBA—

- (1) The protest;
- (2) The date the protest was received and a determination of timeliness; and
- (3) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.

(e) Do not withhold award when—

- (1) The contracting officer makes a written determination that award must be made to protect the public interest; or
- (2) The offeror represents that, within the 6 months preceding submission of its offer, the SBA has determined the concern to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

\* \* \* \* \*

**PART 225—FOREIGN ACQUISITION**

5. Section 225.603 is amended by revising paragraph (1)(iii)(C)(2) to read as follows:

**§ 225.603 Procedures.**

- (1) \* \* \*
- (iii) \* \* \*
- (C) \* \* \*

(2) The supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and the duty will be paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

\* \* \* \* \*

**PART 226—OTHER SOCIOECONOMIC PROGRAMS**

6. Section 226.7005 is amended by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

**§ 226.7005 Eligibility as an HBCU or MI.**

\* \* \* \* \*

(b) The contracting officer shall accept an offeror's HBCU or MI status under the provision at 252.226-7001, unless—

- (1) Another offeror challenges the status; or

\* \* \* \* \*

**§ 226.7008 [Amended]**

7. Section 226.7008 is amended in paragraph (b) by removing the word "Certification" and inserting the word "Status" in its place.

**PART 227—PATENTS, DATA, AND COPYRIGHTS**

**§ 227.7004 [Amended]**

8. Section 227.7004 is amended in paragraph (a)(6) by removing the word "certification" and inserting the word "declaration" in its place.

**227.7103-6 [Amended]**

9. Section 227.7103-6 is amended in paragraph (e)(3) by removing the word

"Certification" and inserting the word "Declaration" in its place.

227.7104 [Amended]

10. Section 227.7104 is amended in paragraph (e)(5) by removing the word "Certification" and inserting the word "Declaration" in its place.

PART 233—PROTESTS, DISPUTES, AND APPEALS

Subpart 233.70 [Removed]

11. Subpart 233.70 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 [Amended]

12. Section 252.212-7001 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (b) by removing the entry "252.233-7000 Certification of Claims and Requests for Adjustment or Relief (10 U.S.C. 2410)".

13. Section 252.216-7000 is amended by revising the clause date to read "(JAN 1997)"; by removing paragraph (c)(4); and by revising paragraph (e)(1) to read as follows:

252.216-7000 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

\* \* \* \* \*

(e) \* \* \*

(1) The Contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

\* \* \* \* \*

252.216-7001 [Amended]

14. Section 252.216-7001 is amended by revising the clause date to read "(JAN 1997)"; in the introductory text of paragraph (f)(2) by removing the words "and certifying"; and in the first sentence of paragraph (f)(4) by removing the word "certified".

15. Section 252.217-7005 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraph (e)(6) to read as follows:

252.217-7005 Inspection and Manner of Doing Work.

\* \* \* \* \*

(e) \* \* \*

(6) Furnish the Contracting Officer or designated representative with a copy of the "gas-free" or "safe-for-hotwork" certificate, provided by a Marine Chemist or Coast Guard authorized person in accordance with Occupational Safety and Health

Administration regulations (29 CFR 1915.14) before any hot work is done on a tank;

\* \* \* \* \*

16. Section 252.219-7000 is amended by revising the clause date to read "(JAN 1997)"; and by revising the introductory text of paragraph (c) to read as follows:

252.219-7000 Small Disadvantaged Business Concern Representation (DoD Contracts).

\* \* \* \* \*

(c) Complete the following—

\* \* \* \* \*

17. Section 252.225-7009 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraphs (i)(9) and (i)(10) to read as follows:

252.225-7009 Duty-Free Entry—Qualifying Country End Products and Supplies.

\* \* \* \* \*

(i) \* \* \*

(9) List of items purchased; (10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer;

\* \* \* \* \*

18. Section 252.225-7010 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraph (c)(10) to read as follows:

252.225-7010 Duty-Free Entry—Additional Provisions.

\* \* \* \* \*

(c) \* \* \*

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

\* \* \* \* \*

19. Section 252.225-7018 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraph (e) to read as follows:

252.225-7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E.

\* \* \* \* \*

(e) The offeror ( ) is ( ) is not a U.S. firm.

(End of provision)

20.-21. Section 252.225-7037 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraphs (i)(9) and (i)(10) to read as follows:

252.225-7037 Duty-Free Entry—NAFTA Country End Products and Supplies.

\* \* \* \* \*

(i) \* \* \*

(9) List of items purchased; (10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

\* \* \* \* \*

22. Section 252.226-7001 is amended by revising the section title, clause title and date, and paragraph (b) to read as follows:

252.226-7001 Historically Black College or University and Minority Institution Status.

\* \* \* \* \*

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION STATUS (JAN 1997)

\* \* \* \* \*

(b) Status.

If applicable, the offeror shall check the appropriate space below:

\_\_\_\_\_ A historically black college or university

\_\_\_\_\_ A minority institution

(End of provision)

23. Section 252.227-7036 is revised to read as follows:

252.227-7036 Declaration of Technical Data Conformity.

As prescribed at 227.7103-6(e)(3) or 227.7104(e)(5), use the following clause:

DECLARATION OF TECHNICAL DATA CONFORMITY (JAN 1997)

All technical data delivered under this contract shall be accompanied by the following written declaration: The Contractor, \_\_\_\_\_, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. \_\_\_\_\_ is complete, accurate, and complies with all requirements of the contract.

Date \_\_\_\_\_

Name and Title of Authorized Official \_\_\_\_\_ (End of clause)

252.233-700 [Removed].

24. Section 252.233-7000 is removed.

25. Section 252.236-7003 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraphs (c)(1) and (c)(2) and the introductory text of paragraph (c)(3) to read as follows:

252.236-7003 Payment for Mobilization and Preparatory Work.

\* \* \* \* \*

(c) \* \* \*

(1) An account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or copies of payrolls and freight bills; and

(3) The Contractor's documentation—

\* \* \* \* \*

26. Section 252.236-7006 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraph (c) to read as follows:

**252.236-7006 Cost Limitation.**

\* \* \* \* \*

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

\* \* \* \* \*

**252.239-7007 [Amended].**

27. Section 252.239-7007 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (d)(1) by removing the word "certified".

**252.247-7001 [Amended].**

28. Section 252.247-7001 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (g) by removing the word "certification" and inserting the word "statement" in its place.

[FR Doc. 97-1036 Filed 1-16-97; 8:45 am]

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**48 CFR Part 225**

**[DFARS Case 96-D030]**

**Defense Federal Acquisition Regulation Supplement; Metalworking Machinery—Trade Agreements**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the expiration of certain statutory restrictions on the acquisition of machine tools.

**EFFECTIVE DATE:** January 17, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131. Telefax (703) 602-0350. Please cite DFARS Case 96-D030 in all correspondence related to this issue.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

10 U.S.C. 2534 (a)(4)(B) restricted the acquisition of non-domestic machine tools in certain Federal Supply Classes for metalworking machinery. This restriction ceased to be effective on October 1, 1996. On November 15, 1996 (61 FR 58488), the DFARS was amended to remove language that implemented 10 U.S.C. 2534(a)(4)(B), at 225.7004,

252.225-7017, and 225.7040. This final rule makes a related amendment at DFARS 225.403-70. The rule removes the exception to application of the trade agreements acts for those machine tools for which acquisition was previously, but is no longer, restricted by 10 U.S.C. 2534(a)(4)(B).

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96-D030 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 225**

Government procurement.  
Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

**AUTHORITY:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 225—FOREIGN ACQUISITION**

**225.403-70 [Amended]**

2. Section 225.403-70 is amended by removing the entry "34 Metalworking machinery (except 3408, 3410-3419, 3426, 3433, 3441-3443, 3446, 3448, 3449, 3460, 3461)" and inserting in its place the entry "34 Metalworking machinery".

[FR Doc. 97-1040 Filed 1-6-97; 8:45 am]

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**48 CFR Part 225**

**[DFARS Case 96-D319]**

**Defense Federal Acquisition Regulation Supplement; Authority To Waive Foreign Purchase Restrictions**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule

amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 810 of the National Defense Authorization Act of Fiscal Year 1997 (Public Law 104-201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534.

**DATES:** *Effective date:* January 17, 1997.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D319 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule implements Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534, applicable to buses, chemical weapons antidote, air circuit breakers, ball and roller bearings, totally enclosed lifeboat survival systems, and anchor and mooring chain, if application of the restrictions would impede the reciprocal procurement of defense items under a memorandum of understanding. However, this waiver authority will not be effective with regard to the additional restrictions on the acquisition of anchor and mooring chain, noncommercial ball and roller bearings, and totally enclosed lifeboat survival systems, contained in defense appropriations acts (and implemented at DFARS 225.7012, 225.7019, and 225.7022, respectively).

**B. Regulatory Flexibility Act**

This interim 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 there are no known small business manufacturers of buses, air circuit breakers, or the restricted chemical weapons antidote; acquisition of anchor and mooring chain, noncommercial ball and roller bearings, and totally enclosed lifeboat survival systems is presently restricted to domestic sources by defense