

**** See Table 4.

[FR Doc. 00-6168 Filed 3-15-00; 8:45 am]
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DEPARTMENT OF DEFENSE

48 CFR Part 208

[DFARS Case 2000-D005]

Defense Federal Acquisition Regulation Supplement; Federal Prison Industries Waiver Threshold

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to increase, from \$25 to \$250, the threshold at which DoD must request clearance from Federal Prison Industries (FPI) before purchasing FPI Schedule items from sources other than FPI, when delivery is required within 10 days.

EFFECTIVE DATE: March 16, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-4245; telefax (703) 602-0350. Please cite DFARS Case 2000-D005.

SUPPLEMENTARY INFORMATION:

A. Background

Subpart 8.6 of the Federal Acquisition Regulation (FAR) requires Federal agencies to obtain clearance from FPI before purchasing FPI Schedule items from sources other than FPI. FAR 8.606(e) provides an exception to the clearance requirement for orders of Schedule items totaling \$25 or less that require delivery within 10 days. On January 24, 2000, FPI granted DoD further exception to the clearance requirement for orders totaling \$250 or less that require delivery within 10 days. This final rule amends the DFARS to reflect the \$250 threshold for DoD.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, DoD will consider comments from small entities

concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000-D005.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements 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 Part 208

Government procurement.

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

Therefore, 48 CFR Part 208 is amended as follows:

1. The authority citation for 48 CFR Part 208 continues to read as follows:

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

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Subpart 208.6 is added to read as follows:

Subpart 208.6—Acquisition from Federal Prison Industries, Inc.

Sec.
208.606 Exceptions.

208.606 Exceptions.

(e) DoD activities do not need an FPI clearance for orders of listed items totaling \$250 or less than require delivery within 10 days.

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DEPARTMENT OF DEFENSE

48 CFR Parts 212, 244, 247, and 252

[DFARS Case 98-D014]

Defense Federal Acquisition Regulation Supplement; Cargo Preference—Subcontracts for Commercial Items

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending Defense Federal Acquisition Regulation Supplement (DFARS) policy regarding the applicability of statutory requirements for use of U.S. vessels in the transportation of supplies by sea. The

rule clarifies requirements for use of U.S. vessels under subcontractors for the acquisition of commercial items.

EFFECTIVE DATE: March 16, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0288; telefax (703) 602-0350. Please cite DFARS Case 98-D014.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2631 provides a preference for the use of U.S. vessels for ocean transportation of supplies purchased under DoD contracts. DFARS Parts 212 and 247 waive the requirements of 10 U.S.C. 2631 for subcontracts for the acquisition of commercial items. This rule amends DFARS Parts 212 and 247 and corresponding clauses to limit the types of subcontracts to which the waiver of 10 U.S.C. 2631 is applicable. The rule is intended to ensure compliance with 10 U.S.C. 2631 for ocean cargoes clearly destined for DoD use, while avoiding disruption of commercial delivery systems.

DoD published a proposed rule at 64 FR 33238 on June 22, 1999. Nine sources submitted comments in response to the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. 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 most entities that provide ocean transportation of freight are not small business concerns.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements 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 212, 244, 247, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212, 244, 247, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 212, 244, 247, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.504 is amended by revising paragraph (a)(xxii) to read as follows:

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(xxii) 10 U.S.C. 2631, Transportation of Supplies by Sea (except as provided in the clause at 252.247–7023, Transportation of Supplies by Sea).

* * * * *

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

3. Section 244.403 is revised to read as follows:

244.403 Contract clause.

Use the clause at 252.244–7000, Subcontracts for Commercial Items and Commercial Components (DoD contracts), in solicitations and contracts for supplies or services other than commercial items, that contain any of the following clauses: 252.225–7014 Preference for Domestic Specialty Metals, Alternate I, 252.247–7023 Transportation of Supplies by Sea, and 252.247–7024 Notification of Transportation of Supplies by Sea.

PART 247—TRANSPORTATION

247.572–1 [Amended]

4. Section 247.572–1 is amended in paragraph (a) by removing the last sentence.

5. Section 247.573 is amended by revising paragraph (b) to read as follows:

247.573 Solicitation provision and contract clauses.

* * * * *

(b)(1) Use the clause at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, except—

(i) Those for direct purchase of ocean transportation services; or

(ii) Those with an anticipated value at or below the simplified acquisition threshold.

(2) Use the clause with its Alternate I in other than construction contracts, if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations.

(3) Use the clause with its Alternate II in other than construction contracts, if any of the supplies to be transported are commercial items that are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.212–7001 is amended as follows:

a. By revising the clause date;
b. By removing paragraph (a);
c. By redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively;

d. In newly designated paragraph (a) by adding in numerical order the entry “____ 252.247–7023 Transportation of Supplies by Sea (____ Alternate I) (____ Alternate II) (10 U.S.C. 2631).”;

e. By revising newly designated paragraph (b) to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Mar 2000)

* * * * *

(b) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items clause of this contract (Federal Acquisition Regulation 52.212–5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225–7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247–7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247–7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

7. Section 252.244–7000 is revised to read as follows:

252.244–7000 Subcontracts for commercial items and commercial components (DoD contracts).

As prescribed in 244.403, use the following clause:

Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (Mar 2000)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract (Federal Acquisition Regulation 52.244–6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225–7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247–7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247–7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

8. Section 252.247–7023 is amended as follows:

a. By revising the introductory text and clause date;
b. In paragraph (a)(5) by removing the last sentence;

c. By redesignating paragraphs (b) through (g) as paragraphs (c) through (h), respectively;

d. By adding a new paragraph (b);
e. In newly designated paragraph (c) by removing the first sentence of the introductory text;

f. By revising newly designated paragraph (h); and

g. By adding Alternates I and II. The revised and added text reads as follows:

252.247–7023 Transportation of supplies by sea.

As prescribed in 247.573(b)(1), use the following clause:

Transportation of Supplies by Sea (Mar. 2000)

* * * * *

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract; or

(ii) The supplies being transported are—
(A) Noncommercial items; or
(B) Commercial items that—

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

* * * * *

(h) The Contractor shall include this clause, including this paragraph (h), in all subcontracts under this contract that—

(1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b)(3) of this clause.

(End of clause)

Alternate I (MAR 2000).

As prescribed in 247.573(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

Alternate II (MAR 2000).

As prescribed in 247.573(b)(3), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment),

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange

cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

9. Section 252.247–7024 is amended by revising the clause date and paragraph (b) to read as follows:

252.247–7024 Notification of Transportation of Supplies by Sea.

* * * * *

Notification of Transportation of Supplies by Sea (Mar 2000)

* * * * *

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

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DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 252

[DFARS Case 99–D308]

Defense Federal Acquisition Regulation Supplement; Construction and Service Contracts in Noncontiguous States

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Acting Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8071 of the Fiscal Year 2000 Defense Appropriations Act. Section 8071 provides that DoD contracts for construction or services performed in a

noncontiguous State, that has an unemployment rate in excess or the national average, must include a clause requiring the contractor to employ individuals who are residents of that State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills.

DATES: Effective date: March 16, 2000.

Comment date: Comments on the interim rule should be submitted in writing to the address shown on or before May 15, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 99–D308 in all correspondence related to this rule. E-mail comments should cite DFARS Case 99–D308 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises DFARS Subpart 222.70 and the clause at 252.222–7000 to implement Section 8071 of the Fiscal Year 2000 Defense Appropriations Act (Public Law 106–79). Section 8071 provides that DoD contracts for construction or services performed in a State (as defined in 10 U.S.C. 381(d)), that is not contiguous with another State and has an unemployment rate in excess of the national average, must include a clause requiring the contractor to employ, for the purpose of performing that portion of the contract in the noncontiguous State, individuals who are residents of that State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule 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. A similar DFARS requirement already exists for the noncontiguous States of Alaska and Hawaii. DoD knows of no economic impact on small entities that has resulted from the implementation of