

(A) Allocations of capital apply predominantly to commercial item lines;

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

5. Section 215.404-71-5 is added to read as follows:

215.404-71-5 Cost efficiency factor.

(a) This special factor provides an incentive for contractors to reduce costs. To the extent that the contractor can demonstrate cost reduction efforts that benefit the pending contract, the contracting officer may increase the prenegotiation profit objective by an amount not to exceed 4 percent of total objective cost (Block 20 of the DD Form 1547) to recognize these efforts.

(b) To determine if using this factor is appropriate, the contracting officer shall consider criteria, such as the following, to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract:

(1) The contractor's participation in Single Process Initiative improvements;

(2) Actual cost reductions achieved on prior contracts;

(3) Reduction or elimination of excess or idle facilities;

(4) The contractor's cost reduction initiatives (e.g., competition advocacy programs, technical insertion programs, obsolete parts control programs, spare parts pricing reform, value engineering, outsourcing of functions such as information technology). Metrics developed by the contractor such as fully loaded labor hours (i.e., cost per labor hour, including all direct and indirect costs) or other productivity measures may provide the basis for assessing the effectiveness of the contractor's cost reduction initiatives over time;

(5) The contractor's adoption of process improvements to reduce costs;

(6) Subcontractor cost reduction efforts;

(7) The contractor's effective incorporation of commercial items and processes; or

(8) The contractor's investment in new facilities when such investments contribute to better asset utilization or improved productivity.

(c) When selecting the percentage to use for this special factor, the contracting officer has maximum flexibility in determining the best way to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract. However, the contracting officer shall consider the impact that quantity differences, learning, changes in scope, and economic factors such as inflation and deflation will have on cost reduction.

215.404-72 [Amended]

6. Section 215.404-72 is amended as follows:

a. In paragraph (b)(1)(i), in the first sentence, by removing "Block 18" and adding in its place "Block 20";

b. By removing paragraph (b)(1)(ii); and

c. By redesignating paragraph (b)(1)(iii) as paragraph (b)(1)(ii).

7. Section 215.404-73 is amended by revising the first sentence of paragraph (b)(2)(i) to read as follows:

215.404-73 Alternate structured approaches.

* * * * *

(b) * * *

(2) * * *

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the amount of facilities capital cost of money. * * *

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8. Section 215.404-74 is amended by revising paragraph (c) to read as follows:

215.404-74 Fee requirements for cost-plus-award-fee contracts.

* * * * *

(c) Apply the offset policy in 215.404-73(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the amount of facilities capital cost of money; and

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DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002-D007]

Defense Federal Acquisition Regulation Supplement; NAFTA Procurement Threshold

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). The rule implements the

determination of the U.S. Trade Representative to increase the dollar threshold for application of the North American Free Trade Agreement (NAFTA) to procurement of goods from Mexico, from \$54,372 to \$56,190.

EFFECTIVE DATE: April 26, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2002-D007.

SUPPLEMENTARY INFORMATION:

A. Background

On February 21, 2002 (67 FR 8057), the U.S. Trade Representative published a determination that increased the dollar threshold for application of NAFTA to procurement of goods from Mexico, from \$54,372 to \$56,190. This final rule amends the prescription for use of the clause at DFARS 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, to reflect the new dollar threshold.

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 rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, 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 2002-D007.

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 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

225.1101 [Amended]

2. Section 225.1101 is amended in paragraph (13)(i)(A) in the first sentence, and in paragraph (13)(i)(B), by removing “\$54,372” and adding in its place “\$56,190”.

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2000–D020]

Defense Federal Acquisition Regulation Supplement; Balance of Payments Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy pertaining to the Balance of Payments Program. The DFARS policy replaces Federal Acquisition Regulation (FAR) policy on this subject that is being eliminated. The Balance of Payments Program provides a preference for the acquisition of domestic supplies and construction material for use outside the United States.

EFFECTIVE DATE: April 26, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2000–D020.

SUPPLEMENTARY INFORMATION:

A. Background

This DFARS rule provides policy pertaining to the Balance of Payments Program to replace FAR policy on this subject that has been proposed for elimination (65 FR 54936, September 11, 2000). The Balance of Payments Program applies to contracts for supplies to be used, and construction to be performed, outside the United States. Although the DFARS already contained policy that implemented the Balance of Payments Program for acquisition of supplies for use outside the United States, DoD used the FAR policy for construction contracts performed outside the United States. This final rule adds DFARS policy for application of

the Balance of Payments Program to construction contracts.

DoD published a proposed rule with request for comments at 66 FR 47155 on September 11, 2001. DoD also requested comments on the advisability of discontinuing application of the Balance of Payments Program to DoD construction contracts.

Seven sources submitted comments on the proposed rule. Four of the respondents expressed concerns regarding the potential impact of the rule on the American maritime industry. A summary of these comments and the DoD response is provided below:

- *Comment:* The Balance of Payments Program should be applied to purchases at or below the simplified acquisition threshold.

DoD Response: Do not concur. The exception for purchases at or below the simplified acquisition threshold represents a continuation of the policy at FAR 25.303(a). DoD is not aware of any significant negative impact to domestic sources that has resulted from use of this exception.

- *Comment:* DoD should eliminate the policy that permits a contracting officer to make a pre-solicitation determination that a requirement can be filled only by a foreign product.

DoD Response: Do not concur. The DFARS policy sufficiently identifies the situations where such a determination would be appropriate and, therefore, should not arbitrarily or adversely affect domestic sources.

- *Comment:* The rule grants wide discretionary authority to contracting officers and agency heads to avoid implementing the Balance of Payments Program.

DoD Response: Do not concur. The authorities provided to contracting officers and agency heads are sufficiently defined to maintain proper compliance with the Balance of Payments Program.

- *Comment:* The rule exempts “petroleum products” and “end items acquired for commissary resale” from the Balance of Payments Program. These product descriptions are too generic and should be considered for deletion.

DoD Response: Do not concur. These exemptions represent a continuation of the policy at FAR 25.303(d). DoD is not aware of any significant negative impact to domestic sources that has resulted from use of these exemptions.

Three respondents submitted comments regarding administrative aspects of the rule. A summary of these comments and the DoD response is provided below:

- *Comment:* Any determination made by the contracting officer, that a

requirement can best be filled by a foreign end product or construction material, and any determination made by the head of the agency, that it is not in the public interest to apply the restrictions of the Balance of Payments Program to an end product or construction material, should be in writing.

DoD Response: Do not concur. Although such determinations are frequently in writing, DoD does not consider it necessary to specify a requirement for a written determination. The policy at FAR 25.303, pertaining to similar determinations, does not specify that the determinations be in writing. DoD is not aware of any implementation problems that have resulted from use of the FAR policy.

- *Comment:* The rule should clarify who has the authority to make the determination at 225.7501(a)(2)(ii), that a product or material can best be acquired in the geographic area concerned.

DoD Response: Concur. This paragraph has been moved to 225.7501(5)(ii) to clarify that the contracting officer has the authority to make this determination.

- *Comment:* The contracting officer’s determination made in accordance with 225.7501(a)(1), that a particular construction material is at or below the simplified acquisition threshold, will be reflected in the contract clause at 252.225–7044(b)(2), in the list of excepted construction materials. This could cause a conflict if the contracting officer determines the construction material to be above the simplified acquisition threshold, but the offeror determines the material to be at or below the threshold.

DoD Response: Do not concur. Exclusion of a particular construction material from the list of excepted materials at 252.225–7044(b)(2) does not necessarily mean the contracting officer has determined the material to be above the simplified acquisition threshold. Materials at or below the simplified acquisition threshold are covered by the blanket exception at 252.225–7044(b)(1). Materials excepted for other reasons would be listed at 252.225–7044(b)(2).

DoD also received comments on the advisability of eliminating the Balance of Payments Program for DoD construction contracts. Several respondents expressed concerns regarding the impact that elimination of the program would have on the American maritime industry. Others favored elimination of the program, stating that the program has resulted in higher costs and longer lead times. DoD is continuing to study this issue.