

facsimile (703) 602-0350. Please cite DFARS Case 2003-D017.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

- Revision of DFARS 206.001 to clarify the text.
- Deletion of text at DFARS 206.202(b) regarding documentation needed to support a DoD determination to exclude a particular source from a contact action in order to establish or maintain an alternative source of supplies or services; and deletion of text at DFARS 206.302-2 containing examples of circumstances under which use of other than full and open competition may be appropriate due to unusual and compelling urgency. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.
- Deletion of obsolete text at DFARS 206.302-1(b)(4) and deletion of unnecessary text at DFARS 206.303-1(b) and (c) and 206.303-2.

DoD published a proposed rule at 69 FR 8149 on February 23, 2004. DoD received one comment on the proposed rule. The respondent recommended further revision of the text at 206.001 to clarify that the exception from competition authorized by 10 U.S.C. 1091 applies only to contracts awarded to individuals. DoD has included this clarification in 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 the DFARS changes in this rule are limited to clarifying revisions or deletion of text that is unnecessary or internal to DoD.

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 206

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 206 is amended as follows:

■ 1. The authority citation for 48 CFR Part 206 continues to read as follows:

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

PART 206—COMPETITION REQUIREMENTS

■ 2. Section 206.001 is revised to read as follows:

206.001 Applicability.

(b) As authorized by 10 U.S.C. 1091, contracts awarded to individuals using the procedures at 237.104(b)(ii) are exempt from the competition requirements of FAR Part 6.

■ 3. Section 206.202 is revised to read as follows:

206.202 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F shall identify the source to be excluded from the contract action. Include the information at PGI 206.202(b), as applicable, and any other information that may be pertinent, in the supporting documentation.

206.302-1 [Amended]

■ 4. Section 206.302-1 is amended by removing paragraph (b)(4).

■ 5. Section 206.302-2 is revised to read as follows:

206.302-2 Unusual and compelling urgency.

(b) *Application.* For guidance on circumstances under which use of this authority may be appropriate, see PGI 206.302-2(b).

206.303-1 [Amended]

■ 6. Section 206.303-1 is amended by removing paragraphs (b) and (c).

206.303-2 [Removed]

■ 7. Section 206.303-2 is removed.

[FR Doc. 04-27349 Filed 12-14-04; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 212, 213, 225, and 252

[DFARS Case 2003-D088]

Defense Federal Acquisition Regulation Supplement; Free Trade Agreements—Chile and Singapore

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement new Free Trade Agreements with Chile and Singapore, as approved by Congress in the United States-Chile Free Trade Agreement Implementation Act and the United States-Singapore Free Trade Agreement Implementation Act. The new Free Trade Agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials from Chile and Singapore, and specify procurement procedures designed to ensure fairness.

EFFECTIVE DATE: December 15, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2003-D088.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim DFARS rule at 69 FR 1926 on January 13, 2004, to implement new Free Trade Agreements with Chile and Singapore, in accordance with the United States-Chile Free Trade Agreement Implementation Act (Public Law 108-77) and the United States-Singapore Free Trade Agreement Implementation Act (Public Law 108-78). Applicable changes to the Federal Acquisition Regulation (FAR) were published in Federal Acquisition Circular (FAC) 2001-19 on January 7, 2004 (69 FR 1051; Interim rule), and in FAC 2001-25 on October 5, 2004 (69 FR 59700; Final rule).

DoD received no comments on the interim DFARS rule. However, the final rule includes the following additional changes:

- Amendment of the trade agreements clauses at DFARS 252.225–7021, 252.225–7036, and 252.225–7045 to remove the statement that United States law will apply to resolve any claim of breach of contract. This statement is no longer necessary, because the final rule published in FAC 2001–25 contains a new FAR clause, 52.233–4, Applicable Law for Breach of Contract Claim, that is prescribed for inclusion in all contracts.

- A minor amendment at DFARS 225.502(c)(i)(B) to clarify that, in acquisitions subject to a Free Trade Agreement, only eligible products of the applicable Free Trade Agreement country are exempt from application of the Buy American Act or Balance of Payments Program evaluation factor (e.g., for acquisitions between \$25,000 and \$58,550, a Mexican end product would be a “NAFTA country end product” but would not be an “eligible product,” in accordance with the thresholds at FAR 25.402).

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.* Although the rule opens up Government procurement to the products of Chile, and lowers the trade agreements threshold for the products of Singapore, the economic impact on U.S. small businesses will not be significant. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401–70, and acquisitions below \$100,000 that are set aside for small businesses are exempt.

C. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved by the Office of Management and Budget under Clearance Number 0704–0229. The impact, however, is negligible. In the provision at DFARS 252.225–7020, Trade Agreements Certificate, the offeror no longer has to list offers of end products from Chile as nondesignated country end products. However, offers of Chilean end products would have been unlikely, because purchase of foreign products other than

eligible products is prohibited by the Trade Agreements Act. In the provision at DFARS 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate, the offeror must list all end products that are not domestic end products. The offeror will list products of Chile and Singapore on the list of Free Trade Agreement country end products, rather than the list of “other foreign end products.”

List of Subjects in 48 CFR Parts 212, 213, 225, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

- Accordingly, the interim rule amending 48 CFR parts 212, 213, 225, and 252, which was published at 69 FR 1926 on January 13, 2004, is adopted as a final rule with the following changes:
 - 1. The authority citation for 48 CFR parts 212, 213, 225, and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

225.502 [Amended]

- 2. Section 225.502 is amended in paragraph (c)(i)(B) by removing “end” and adding in its place “eligible”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

- 3. Section 252.212–7001 is amended as follows:

- a. By revising the clause date to read “(DEC 2004)”;
- b. In paragraph (b), in entry “252.225–7021”, by removing “(JUN 2004)” and adding in its place “(DEC 2004)”;
- c. In paragraph (b), in entry “252.225–7036”, by removing “(JAN 2004)” the first place it appears and adding in its place “(DEC 2004)”.

252.225–7021 [Amended]

- 4. Section 252.225–7021 is amended as follows:

- a. By revising the clause date to read “(DEC 2004)”;
- b. By removing paragraph (e); and
- c. By redesignating paragraph (f) as paragraph (e).

252.225–7036 [Amended]

- 5. Section 252.225–7036 is amended as follows:

- a. By revising the clause date to read “(DEC 2004)”;

- b. By removing paragraph (e).

252.225–7045 [Amended]

- 6. Section 252.225–7045 is amended as follows:

- a. By revising the clause date to read “(DEC 2004)”;
- b. By removing paragraph (d).

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DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 2003–D097/2004–D023]

Defense Federal Acquisition Regulation Supplement; Contract Period for Task and Delivery Order Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 843 of the National Defense Authorization Act for Fiscal Year 2004 and Section 813 of the National Defense Authorization Act for Fiscal Year 2005. Section 843 placed a 5-year limit on the period of task or delivery order contracts awarded under 10 U.S.C. 2304a. Section 813 further amended 10 U.S.C. 2304a to permit a total period of up to 10 years, which may be exceeded if the head of the agency determines in writing that exceptional circumstances require a longer contract period. The DFARS rule clarifies that the 10-year limit applies to the ordering period, establishes a limit on the length of orders, and includes other key information regarding applicability.

DATES: *Effective date:* December 15, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before February 14, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D097, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2003–D097 in the subject line of the message.