

216.470 Other applications of award fees.

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(a) * * *

(1) Purchase of capital assets (including machine tools) manufactured in the United States, on major defense acquisition programs; or

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 225 and 252**

[DFARS Case 2003-D021]

Defense Federal Acquisition Regulation Supplement; Acquisition of Ball and Roller Bearings

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements pertaining to the acquisition of ball and roller bearings from domestic sources. This final rule addresses the requirements of annual DoD appropriations acts and eliminates text addressing obsolete statutory requirements.

DATES: *Effective Date:* March 21, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2003-D021.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD published a proposed rule at 70 FR 8560 on February 22, 2005. The rule proposed amendments to the restrictions on the acquisition of ball and roller bearings at DFARS 225.7009 and 252.225-7016 to (1) address only the exceptions, waivers, and waiver authority available to the contracting officer under current law; and (2) apply the exceptions to 10 U.S.C. 2534, authorized by Section 8003 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355; 41 U.S.C. 430), as implemented at DFARS 212.504(a)(xviii), to bearings that are

commercial components of non-commercial end items or components.

The restriction of 10 U.S.C. 2534(a)(5) expired on October 1, 2005. This does not substantively change the DFARS rule, but provides further support for the rule.

Eight respondents submitted comments on the proposed rule. A discussion of the comments, grouped by subject category, is provided below.

1. *Increased acquisition of nondomestic bearings.* The proposed rule expanded the exception for acquisition of nondomestic bearings by allowing the purchase of nondomestic bearings that are commercial components of a noncommercial end product in acquisitions not using simplified acquisition procedures.

a. *Comment:* One respondent supports the rule as long as small businesses are allowed to sell nondomestic bearings that are approved.

DoD Response: The DFARS rule applies equally to all businesses, large and small.

b. *Comment:* Another respondent is concerned that we are not supporting our troops, because it is still too difficult to purchase replacement ball and roller bearings for DoD weapon systems when those replacement bearings are of a nondomestic origin. This respondent states that few domestic companies can comply or produce a truly domestic bearing, and that the DFARS rule still prevents procuring activities from readily supporting the military as thousands of bearings are turning foreign.

DoD Response: Although DoD acknowledges the identified problems, the rule cannot allow additional purchase of nondomestic bearings due to the restrictions of annual DoD appropriations acts.

c. *Comment:* Three respondents are concerned that the rule will have a negative impact on the bearing industry and national security, by allowing Government contractors to incorporate nondomestic commercial ball and roller bearings into noncommercial end products. They fear loss of domestic capacity and are concerned that the supply of components critical to the national security of the United States may become dependent on manufacturers controlled by governments with interests that are opposed to those of the United States. They object that areas vital to our national security should not be compromised, despite the benefits of global trade.

DoD Response: With the expiration of 10 U.S.C. 2534(a)(5), there is no longer a statutory basis for restricting the

acquisition of bearings that are commercial components of noncommercial end products. DoD will continue to restrict the acquisition of nondomestic noncommercial ball and roller bearings and commercial ball and roller bearings that are purchased as end products, in accordance with the annual DoD appropriations acts.

d. *Comment:* One respondent expresses concern that the acquisition of nondomestic bearings (most likely from China) will stretch the supply chain, introducing instability into the process and extending lead times.

DoD Response: Acquiring bearings even from distant places probably adds only 2 or 3 days to the supply chain.

2. *Waiver process.*

Comment: Several respondents believe that the rule makes the waiver process more difficult and time-consuming and will cause delays in the acquisition of ball and roller bearings.

DoD Response: The rule does not impose new or higher level waiver requirements, but clarifies existing requirements of annual DoD appropriations acts. Heads of agencies can redelegate the waiver authority as appropriate.

3. *Structure and clarity of the regulation.*

a. *Comment:* One respondent recommends maintaining the current distinctions between the restrictions, exceptions, and waiver authority of 10 U.S.C. 2534 and annual DoD appropriations acts, because of a legal distinction between the limit on contracting authority (10 U.S.C. 2534) and the fiscal restrictions on expending funds (annual DoD appropriations acts). The respondent acknowledges that these restrictions largely overlap and have the same result, except for differences in the waiver process.

DoD Response: This comment is no longer applicable, since the restriction on ball and roller bearings at 10 U.S.C. 2534(a)(5) has expired.

b. *Comment:* One respondent states that the existing exception at DFARS 225.7009-2(a)(4) is necessary to acquire bearings for use overseas.

DoD Response: This comment demonstrates the need for clarification of this section. DFARS 225.7009-2(a)(4) only provided an exception to the restrictions of 10 U.S.C. 2534. The annual DoD appropriations act restrictions still applied, unless the exception at 225.7009-2(b) applied, or a waiver was granted in accordance with 225.7009-3(c). Such confusion could result in acquisitions that are not in compliance with the DoD appropriations act restrictions. However, expiration of the restriction at

10 U.S.C. 2534(a)(5), as reflected in this final rule, should eliminate such confusion.

c. *Comment:* One respondent believes that the language in the rule is unclear and, at times, seemingly contradictory. The respondent compares the commercial item exception at 225.7009–3 to the commercial item exception in the clause at 252.225–7016(c). The respondent considers that the clause may be interpreted many different ways and will add expense and time to those attempting to comply.

DoD Response: Although DoD finds that, upon careful reading, the text and clause are compatible, DoD has added a definition of “component” to the clause at DFARS 252.225–7016 and has revised paragraph (c) of the clause to more explicitly state the exceptions. This clause is used only in DoD solicitations and contracts in accordance with the prescription at DFARS 225.7009–5. It is not used if the items being acquired are commercial items other than ball or roller bearings. The exceptions to the clause apply only to ball or roller bearings that are acquired as components. Therefore, the clause requires compliance if the bearing is the end product (whether commercial or noncommercial) or the bearing is a noncommercial component of a noncommercial end product.

4. *Potential legislative changes.*

Comment: One respondent is concerned that, if Congress extends the restriction of 10 U.S.C. 2534 but does not impose the annual appropriations act restriction, the contracting officer would be left with an unnecessary requirement. The respondent also raises the issue that it might be better to introduce this change after there is confirmation that there are no Congressional efforts to extend the restriction at 10 U.S.C. 2534(a)(5) and the statutory limitation on contracting authority lapses in October 2005.

DoD Response: The expiration of 10 U.S.C. 2534(a)(5) is reflected 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 has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This final rule amends the DFARS to update requirements relating to the acquisition of ball and roller bearings from domestic sources. The rule

removes DFARS text relating to the requirements of 10 U.S.C. 2534(a)(5), which expired on October 1, 2005. As a result, the exceptions to domestic source requirements are expanded to permit the purchase of nondomestic bearings that are commercial components of a noncommercial end product, regardless of the dollar value of the acquisition. The rule retains other restrictions on the acquisition of ball and roller bearings, as required by annual DoD appropriations acts. There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis. As a result of comments received on the proposed rule, the final rule contains additional changes to clarify the requirements of the rule. The rule applies to manufacturers of commercial bearings, and manufacturers of noncommercial products that incorporate commercial bearings. Manufacturers of domestic commercial bearings may face increased competition from foreign commercial bearing manufacturers, but manufacturers of noncommercial products incorporating bearings will be relieved of extensive administrative burdens in tracking the source of commercial bearings and requesting waivers from domestic source requirements. All entities will benefit from the increased simplicity and clarity of the regulations.

C. Paperwork Reduction Act

The information collection and record keeping requirements of the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, are approved for use through March 31, 2007, under Office of Management and Budget Clearance 0704–0229. The final rule reduces the estimated annual burden for contractors under the clause by 301,600 hours.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

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. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.7001 is amended by revising paragraphs (a) and (b) to read as follows:

225.7001 Definitions.

* * * * *

(a) *Bearing components* is defined in the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings.

(b) *Component* is defined in the clauses at 252.225–7012, Preference for Certain Domestic Commodities, and 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings.

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■ 3. Section 225.7003 is amended by revising paragraph (b) introductory text to read as follows:

225.7003 Waiver of restrictions of 10 U.S.C. 2534.

* * * * *

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (iii) of this section, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels (see 225.7006). This waiver applies to—

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■ 4. Sections 225.7009 through 225.7009–4 are revised to read as follows:

225.7009 Restriction on ball and roller bearings.

225.7009–1 Scope.

This section implements Section 8065 of the Fiscal Year 2002 DoD Appropriations Act (Pub. L. 107–117) and the same restriction in subsequent DoD appropriations acts.

225.7009–2 Restriction.

Do not acquire ball and roller bearings or bearing components unless the bearings and bearing components are manufactured in the United States or Canada.

225.7009–3 Exception.

The restriction in 225.7009–2 does not apply to contracts or subcontracts for the acquisition of commercial items, except for commercial ball and roller bearings acquired as end items.

225.7009–4 Waiver.

The Secretary of the department responsible for acquisition or, for the Defense Logistics Agency, the Component Acquisition Executive, may waive the restriction in 225.7009–2, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

■ 5. Section 225.7009-5 is added to read as follows:

225.7009-5 Contract clause.

Use the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless—

(a) The items being acquired are commercial items other than ball or roller bearings acquired as end items;

(b) The items being acquired do not contain ball and roller bearings; or

(c) A waiver has been granted in accordance with 225.7009-4.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Section 252.212-7001 is amended by revising the clause date and, in paragraph (b), by revising entry “252.225-7016” 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 2006)

* * * * *

(b) * * *
 __252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (MAR 2006) (Section 8065 of Public Law 107-117 and the same restriction in subsequent DoD appropriations acts).

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■ 7. Section 252.225-7016 is revised to read as follows:

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7009-5, use the following clause:

Restriction on Acquisition of Ball and Roller Bearings (Mar 2006)

(a) *Definitions.* As used in this clause:

(1) *Bearing components* means the bearing element, retainer, inner race, or outer race.

(2) *Component*, other than bearing components, means any item supplied to the Government as part of an end product or of another component.

(3) *End product* means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause, all ball and roller

bearings and ball and roller bearing components delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States, its outlying areas, or Canada. Unless otherwise specified in this contract, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States, its outlying areas, or Canada.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

(1) Commercial components of a noncommercial end product; or

(2) Commercial or noncommercial components of a commercial component of a noncommercial end product.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7009-4 of the Defense Federal Acquisition Regulation Supplement.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts, except those for—

(1) Commercial items; or

(2) Items that do not contain ball or roller bearings. (End of clause)

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 661 and 663

[Docket No. FTA-2005-23082]

RIN 2132-AA80

Buy America Requirements; Amendments to Definitions

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends 49 CFR Parts 661 and 663 as required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [Pub. L. 109-59, August 10, 2005]. The Federal Transit Administration (FTA) proposed certain changes to the Buy America requirements on November 21, 2005 (70 FR 71246). This final rule addresses fewer issues than were proposed in the Notice of Proposed Rulemaking (NPRM) because of the complexity of a number of recommendations and issues presented during the comment period. Thus, FTA

is publishing a final rule on those issues that received little or no public comment. FTA will publish a new NPRM in the **Federal Register** and hold a public meeting to address the issues raised in the NPRM published on November 21, 2005, but not addressed herein. Thereafter, FTA will publish a final rule with respect to such issues.

DATES: *Effective Date:* The effective date of this rule is March 21, 2006.

FOR FURTHER INFORMATION CONTACT: Joseph Pixley, Chief Counsel's Office, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590, (202) 366-4011 or *Joseph.Pixley@fta.dot.gov*.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule and Comments

A copy of this rule and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA-2005-23082 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may retrieve the rule and comments online through the Document Management System (DMS) at: *http://dms.dot.gov*. Enter docket number 23082 in the search field. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/fr/index.html*.

I. Background

On November 28, 2005, FTA published an NPRM in the **Federal Register** (70 FR 71246) discussing a number of proposals as mandated by SAFETEA-LU and to provide further clarification of existing FTA decisions on Buy America. Due to the complexity of many of the Buy America issues addressed in the NPRM, the divergence of opinion on important areas, and the