(ii) Ensures all offers received are fairly considered; or

(2) All contractors offering the required supplies or services under the applicable multiple award schedule, and affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) See PGI 208.405–70 for additional information regarding fair notice to contractors and requirements relating to the establishment of blanket purchase agreements under Federal Supply Schedules.

§ 208.406 Ordering activity responsibilities.

§ 208.406–1 Order placement.

Follow the procedures at PGI 208.406–1 when ordering from schedules.

PART 216—TYPES OF CONTRACTS

■ 5. Section 216.505–70 is revised to read as follows:

§ 216.505–70 Orders under multiple award contracts.

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) for the acquisition of services, and establishes similar policy for the acquisition of supplies;

(2) Applies to orders for supplies or services exceeding $100,000 placed under multiple award contracts;

(3) Also applies to orders placed by non-DoD agencies on behalf of DoD; and

(4) Does not apply to orders for architect-engineer services, which shall be placed in accordance with the procedures in FAR Subpart 36.6.

(b) Each order exceeding $100,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405–6 and includes a written determination that—

(1) A statute expressly authorizes or requires that the purchase be made from a specified source; or

(2) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order. Follow the procedures at PGI 216.505–70 if FAR 16.505(b)(2)(ii) or (iii) is deemed to apply.

(c) An order exceeding $100,000 is placed on a competitive basis only if the contracting officer—

(1) Provides a fair notice of the intent to make the purchase, including a description of the supplies to be delivered or the services to be performed and the basis upon which the contracting officer will make the selection, to all contractors offering the required supplies or services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) When using the procedures in this subsection—

(1) The contracting officer should keep contractor submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations;

(3) The competition requirements in FAR part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer shall consider price or cost under each order as one of the factors in the selection decision; and

(4) The contracting officer should consider past performance on earlier orders under the contract, including quality, timeliness, and cost control.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215 and 216

[DFARS Case 2005–D003]

Defense Federal Acquisition Regulation Supplement; Incentive Program for Purchase of Capital Assets Manufactured in the United States

AGENCY: Defense Acquisition Regulations System, 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 Section 822 of the National Defense Authorization Act for Fiscal Year 2004. Section 822 requires the Secretary of Defense to establish an incentive program for contractors to purchase capital assets manufactured in the United States, and to provide consideration for offerors with eligible capital assets in source selections for major defense acquisition programs.

DATES: Effective 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 2005–D003.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 70 FR 29643 on May 24, 2005, to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 822 added 10 U.S.C. 2436, which requires the Secretary of Defense to (1) establish an incentive program for contractors to purchase capital assets manufactured in the United States under contracts for major defense acquisition programs; and (2) provide consideration for offerors with eligible capital assets in source selections for major defense acquisition programs.

Six respondents submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* Some respondents expressed concern about the future of the U.S. machine tool industry and its ability to help in the defense of the United States. They discussed the severe pressure from foreign competition and asserted that the machine tool industry in particular is essential to the military industrial and critical infrastructure base of the United States.

DoD Response: DoD recognizes these concerns and considers that the incentive program in this DFARS rule provides sufficient motivation for vendors to consider the purchase of U.S. machine tools for major defense acquisition programs as well as for other defense requirements.

2. *Comment:* One respondent stated that the use of U.S. machine tools for fulfilling defense contracts should be mandatory.

DoD Response: The mandatory use of U.S. machine tools would severely affect DoD's ability to manage its contracts in terms of cost, schedule, and performance and would negatively impact DoD's ability to meet warfighter needs. Such an approach could deny DoD the ability to select the contractor that is most likely to provide the most effective solution to DoD needs, simply because that contractor did not possess all U.S. machine tools. Further, if defense contractors were forced to acquire U.S. machine tools in order to be responsive to DoD's needs, the expense of acquiring those tools (estimated to be in the billions) would

be passed on to DoD and would diminish resources available to meet defense requirements.

3. *Comment:* One respondent stated that, at a minimum, the U.S. machine suppliers should be given the opportunity to match any competitive quote for foreign machine tools being procured by a defense contractor.

DoD Response: In most instances, defense contractors already have the tooling required to fulfill DoD's requirements. In those instances where additional tooling is required, the consideration to be provided during source selection/evaluation and the use of award fees should provide ample incentive to the contractor to consider U.S.-made machine tooling instead of foreign tooling and give U.S. machine tool makers the opportunity to match offers of foreign manufacturers.

4. *Comment:* Several respondents objected to the inclusion of the phrase ''when pertinent to the best value determination'' in the direction to consider the purchase and use of capital assets (including machine tools) manufactured in the United States, believing that the phrase is too vague and leaves too much discretion to the contractor or the DoD evaluator in deciding whether there is an advantage to purchasing U.S. machine tools. The respondents stated that such consideration should be an integral part of the evaluation.

DoD Response: The phrase ''when pertinent to the best value determination'' has been excluded from the final rule.

5. *Comment:* One respondent requested that the scope of the benefit be clarified, i.e., better defined for prospective purchasers of machine tools.

DoD Response: DoD's defense suppliers are aware of the concerns expressed by the U.S. machine tool industry and the provisions of Section 822 of the National Defense Authorization Act for Fiscal Year 2004. DoD has structured the incentive program so that the purchase of capital assets (including machine tools) is an integral part of the evaluation and source selection. The benefit of purchasing U.S.-made tooling has been made evident to DoD's suppliers by including U.S. tooling purchase as a consideration in source selection. Additionally, the Government's desire to motivate and reward a contractor for purchase of capital assets (including machine tools) is unmistakable in the wording of the award fee application in DFARS 216.470(a). The financial benefit associated with an award fee is clear.

6. *Comment:* Several respondents wanted DoD to assign objective, quantifiable, and meaningful credits or points, or measurable standards, for the evaluation of capital assets (including machine tooling) in source selection.

DoD Response: The factors and subfactors used in evaluating offerors during source selection reflect the specific procurement being undertaken and, therefore, vary from procurement to procurement. Specific credits or points are not assigned to any of these factors/subfactors. Rather, they are weighted to reflect their importance.

As stated in FAR 15.101, Best value continuum:

> ''An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.''

In major weapons systems acquisition, past performance will obviously be a factor, as will technical expertise, cost, and schedule. Other elements such as small business goals and purchase of U.S. machine tools will also be factors for consideration. The relative weights for these factors will vary. None will be assigned a specific ''credit'' or ''measurable standard.''

In addition to the change described in the response to Comment 4, the final rule excludes the phrase ''and use'' from the text at 215.304(c)(ii) and 216.470(a)(1) to more closely conform to the language of Section 822 of the National Defense Authorization Act for Fiscal Year 2004.

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:

The objective of the rule is to increase the purchase of capital assets (including machine tools) manufactured in the United States. The rule implements 10 U.S.C. 2436, as added by Section 822 of the National Defense Authorization Act for Fiscal Year 2004. Most prime contractors for major defense acquisition programs are large business concerns. However, the rule is expected to have a positive impact on small business manufacturers of machine tools and other capital assets used in major defense acquisition programs, as their sales to DoD prime contractors should increase. There were no issues raised by the public comments in response to the initial regulatory flexibility analysis. As a result of public comments received in response to the interim rule, the final rule contains changes that strengthen the requirement for consideration of the purchase of capital assets manufactured in the United States under contracts for major defense acquisition programs.

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 215 and 216

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 215 and 216, which was published at 70 FR 29643 on May 24, 2005, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 215 and 216 continues to read as follows:

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

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Section 215.304 is amended by revising paragraph (c)(ii) to read as follows:

215.304 Evaluation factors and significant subfactors.

(c) * * *

(ii) In accordance with 10 U.S.C. 2436, consider the purchase of capital assets (including machine tools) manufactured in the United States, in source selections for all major defense acquisition programs as defined in 10 U.S.C. 2430.

PART 216—TYPES OF CONTRACTS

■ 3. Section 216.470 is amended by revising paragraph (a)(1) to read as follows:

216.470 Other applications of award fees.

* * * * *

(a) * * *

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

* * * * *

[FR Doc. 06–2645 Filed 3–20–06; 8:45 am]

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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