

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

RIN 0750-AF22

Defense Federal Acquisition Regulation Supplement; Definitions of Component and Domestic Manufacture (DFARS Case 2005-D010)

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

ACTION: Final rule.

SUMMARY: DoD is issuing this final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the definitions of “component” and “domestic manufacture” as they relate to policy on foreign acquisition.

DATES: *Effective date:* December 24, 2009.

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SUPPLEMENTARY INFORMATION:**A. Background**

DoD published a proposed rule at 71 FR 18695 on April 12, 2006. We did not receive any public comments. Therefore, DoD has issued a final rule with only a minor editorial correction and an update of the baseline.

This final rule amends DFARS Part 225 and associated provisions and clauses to clarify the distinction between foreign acquisition policies that apply only to top-level components of end products and those that apply to both top-level and lower-tier components of end products. As used in this background discussion, “top-level components” are those components that are incorporated directly into the end product; and “lower-tier components” are components that are incorporated into a component of the end product.

The general definition of “component” in FAR 2.101 is “any item supplied to the Government as part of an end item or of another component.” Therefore, for general use, the term includes both top-level components and lower-tier components. For purposes of determining whether a product is a domestic end product under the Buy American Act or the Balance of

Payments Program, the term “component” is defined in FAR 25.003 to include only “an article, material, or supply incorporated directly into an end product or construction material” (*i.e.*, only top-level components). This definition would also be applicable to any other situation in which evaluation of the end product is based on the value of the components, similar to that under the Buy American Act (*e.g.*, to determine a qualifying country end product or whether anchor chain is a domestic end product).

In broadly applying these concepts to DFARS Part 225, “component” has been defined to apply only to top-level components, except in Subpart 225.70, where the term “component” includes components at all tiers. However, there are some requirements of Part 225 other than those in 225.70 that are not based on or are not similar to the Buy American Act, and there are some requirements in 225.70 that should be treated as similar to the Buy American Act.

Therefore, the definitions of “component” included in the final rule reflect the correct applicability of foreign acquisition policies as follows:

- 225.900-70 and 252.225-7013, Duty-Free Entry. Duty-free entry is not related to evaluation of domestic products under the Buy American Act and should apply to qualifying country components at any tier.
- 252.225-7019, Restriction on Anchor and Mooring Chain—The requirement that the cost of components manufactured in the United States exceed 50 percent of the total cost of components is similar to the Buy American Act component test, in which only top-level components are considered. Therefore, the definition restricting application to top-level components should apply.
- 252.225-7025, Restriction on Acquisition of Forgings—The requirement to acquire forging items that are of domestic manufacture is not related to evaluation of domestic products under the Buy American Act and should apply to components at any tier.

In addition, the rule eliminates references to the DoD Industrial Preparedness Production Planning Program, at 225.7005-1 and in the definition of “domestic manufacture” at 252.225-7025, since DoD no longer has an Industrial Preparedness Production Planning Program.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this 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 rule updates and clarifies DFARS terminology, but makes no significant change to DoD acquisition policy. DoD did not receive any comments on regulatory flexibility and impact of the rule on small business entities.

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 225, 236, and 252

Government procurement.

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■ 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 225.900-70 is added to read as follows:

225.900-70 Definition.

“Component,” as used in this subpart, means any item supplied to the Government as part of an end product or of another component.

■ 3. Section 225.7001 is amended by revising paragraph (b); by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) respectively; and by adding a new paragraph (c) to read as follows:

225.7001 Definitions.

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(b) “Component” is defined in the clauses at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals; 252.225-7012, Preference for Certain Domestic Commodities, and 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, except that for use in 225.7007, the term has the meaning given in the clause at 252.225-7019, Restriction on Acquisition of Anchor and Mooring Chain.

(c) "End product" is defined in the clause at 252.225-7012, Preference for Certain Domestic Commodities.

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■ 4. Section 225.7005-1 is revised to read as follows:

225.7005-1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical weapons antidote or component is manufactured in the United States or Canada by a company that—

(a) Has received all required regulatory approvals; and

(b) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

■ 5. Section 225.7101 is revised to read as follows:

225.7101 Definitions.

"Component" and "domestic manufacture," as used in this subpart, are defined in the clause at 252.225-7025, Restriction on Acquisition of Forgings.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Section 252.225-7000 is amended by revising the clause date and paragraph (a) to read as follows:

252.225-7000 Buy American Act—Balance of Payments Program Certificate.

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Buy American Act—Balance of Payments Program Certificate (DEC 2009)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "component," "domestic end product," "foreign end product," "qualifying country," "qualifying country end product," and "United States" have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

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■ 7. Section 252.225-7013 is amended by:

■ a. Revising the clause date;

■ b. Redesignating paragraphs (a)(1) through (3) as paragraphs (a)(2) through (4) respectively; and

■ c. Adding a new paragraph (a)(1) to read as follows:

252.225-7013 Duty-Free Entry.

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Duty-Free Entry (DEC 2009)

(a) * * *

(1) "Component" means any item supplied to the Government as part of an end product or of another component.

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■ 8. Section 252.225-7019 is amended by:

■ a. Revising the clause date;

■ b. Redesignating paragraphs (a) through (c) as paragraphs (b) through (d) respectively;

■ c. Adding a new paragraph (a);

■ d. Amending newly designated paragraph (c) by removing "paragraph (a) of this clause" and by adding "paragraph (b) of this clause" in its place; and

■ e. Revising newly designated paragraph (d) to read as follows:

252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain.

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Restriction on Acquisition of Anchor and Mooring Chain (DEC 2009)

(a) *Definition.*

"Component," as used in this clause, means an article, material, or supply incorporated directly into an end product.

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(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.

■ 9. Section 252.225-7025 is amended by:

■ a. Revising the clause date;

■ b. Redesignating paragraphs (a)(1) and (2) as paragraphs (a)(2) and (3) respectively;

■ c. Adding a new paragraph (a)(1); and

■ d. Revising newly designated paragraph (a)(2) and paragraph (b) to read as follows:

252.225-7025 Restriction on Acquisition of Forgings.

* * * * *

Restriction on Acquisition of Forgings (DEC 2009)

(a) * * *

(1) Component means any item supplied to the Government as part of an end product or of another component.

(2) Domestic manufacture means manufactured in the United States, its outlying areas, or Canada.

* * * * *

(b) End products and their components delivered under this

contract shall contain forging items that are of domestic manufacture only.

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■ 10. Section 252.225-7035 is amended by revising the clause date and paragraph (a) to read as follows:

252.225-7035 Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

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Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate (DEC 2009)

(a) *Definitions.* "Bahrainian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "foreign end product," "Moroccan end product," "qualifying country end product," and "United States," as used in this provision, have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

Defense Federal Acquisition Regulations Supplement; Statutory Waiver for Commercially Available Off-the-Shelf Items (DFARS Case 2008-D009)

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

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to the FAR changes implementing the waiver of the component test of the Buy American Act to contracts and subcontracts. The Federal Acquisition Regulation (FAR) Case 2000-305 implemented 41 U.S.C. 431 with respect to the inapplicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf (COTS) items.

DATES: *Effective Date:* December 24, 2009.