

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 203 and 252**

RIN 0750-AG97

Defense Federal Acquisition Regulation Supplement; Agency Office of the Inspector General (DFARS Case 2011-D006)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make some administrative corrections relating to DFARS clause 252.203-7003, Agency Office of the Inspector General.

DATES: *Effective Date:* June 6, 2011.

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-1302; facsimile 703-602-0350. Please cite DFARS Case 2011-D006.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 27, 2010, DoD published a final rule under DFARS Case 2010-D015, DoD Office of the Inspector General (75 FR 59101). That final rule provided the address for the DoD Office of the Inspector General, as required by FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct.

This final rule corrects two omissions in that rule published in September 2010. At 203.1004(a), the clause prescription did not include the title of the clause at 252.203-7003. This rule adds the clause title to the prescription.

The clause prescription at 203.1004 states that the clause at DFARS 252.203-7003 is used in solicitations and contracts that include the FAR clause at 52.203-13. FAR clause 52.203-13 is applicable to commercial items and is listed in FAR clause 52.212-5. If the contractor must make disclosures to the agency office of the Inspector General, as required by paragraph (b)(3)(i) of FAR 52.203-13, the contractor would need to know the address of the agency office of the Inspector General. However, DFARS case 2010-D015 did not add the DFARS clause at 252.203-7003, which provides

the address of the DoD Office of the Inspector General, to the list of contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items (DFARS 252.212-7001). This final rule remedies that omission. The rule also updates the list of clauses at 252.212-7001.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because an initial regulatory flexibility analysis is only required for proposed or interim rules that require publication for public comment (5 U.S.C. 603) and a final regulatory flexibility analysis is only required for final rules that were previously published for public comment, and for which an initial regulatory flexibility analysis was prepared (5 U.S.C. 604).

This final rule does not constitute a significant DFARS revision as defined at FAR 1.501-1 because 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 the Government. Therefore, publication for public comment under 41 U.S.C. 1707 is not required.

IV. Paperwork Reduction Act

The rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 203 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 203 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Amend section 203.1004 by revising paragraph (a) to read as follows:

203.1004 Contract clauses.

(a) Use the clause at 252.203-7003, Agency Office of the Inspector General, in solicitations and contracts that include the FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.212-7001 by revising the clause date and revising paragraph (b) 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.

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (JUN 2011)

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(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

(1) ___ 252.203-7000, Requirements Relating to Compensation of Former DoD Officials (JAN 2009) (Section 847 of Pub. L. 110-181).

(2) ___ 252.203-7003, Agency Office of the Inspector General (SEP 2010) (Section 6101 of Pub. L. 110-252, 41 U.S.C. 3509 note).

(3) ___ 252.205-7000, Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

(4) ___ 252.219–7003, Small Business Subcontracting Plan (DoD Contracts) (OCT 2010) (15 U.S.C. 637).

(5) ___ 252.219–7004, Small Business Subcontracting Plan (Test Program) (JAN 2011) (15 U.S.C. 637 note).

(6)(i) ___ 252.225–7001, Buy American Act and Balance of Payments Program (JAN 2009) (41 U.S.C. chapter 83, E.O. 10582).

(ii) ___ Alternate I (DEC 2010) of 252.225–7001.

(7) ___ 252.225–7008, Restriction on Acquisition of Specialty Metals (JUL 2009) (10 U.S.C. 2533b).

(8) ___ 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals (JAN 2011) (10 U.S.C. 2533b).

(9) ___ 252.225–7012, Preference for Certain Domestic Commodities (JUN 2010) (10 U.S.C. 2533a).

(10) ___ 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).

(11) ___ 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings (DEC 2010) (Section 8065 of Pub. L. 107–117 and the same restriction in subsequent DoD appropriations acts).

(12)(i) ___ 252.225–7021, Trade Agreements (NOV 2009) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

(ii) ___ Alternate I (SEP 2008) of 252.225–7021.

(iii) ___ Alternate II (DEC 2010) of 252.225–7021.

(13) ___ 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

(14) ___ 252.225–7028, Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

(15)(i) ___ 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program (DEC 2010) (41 U.S.C. chapter 83, and 19 U.S.C. 3301 note).

(ii) ___ Alternate I (JUL 2009) of 252.225–7036.

(iii) ___ Alternate II (DEC 2010) of 252.225–7036.

(iv) ___ Alternate III (DEC 2010) of 252.225–7036.

(16) ___ 252.225–7038, Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).

(17) ___ 252.226–7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107–248 and similar sections in subsequent DoD appropriations acts).

(18) ___ 252.227–7015, Technical Data—Commercial Items (MAR 2011) (10 U.S.C. 2320).

(19) ___ 252.227–7037, Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).

(20) ___ 252.232–7003, Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).

(21) ___ 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111–84).

(22) ___ 252.237–7019, Training for Contractor Personnel Interacting with

Detainees (SEP 2006) (Section 1092 of Pub. L. 108–375).

(23) ___ 252.243–7002, Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

(24) ___ 252.246–7004, Safety of Facilities, Infrastructure, and Equipment For Military Operations (OCT 2010) (Section 807 of Pub. L. 111–84).

(25) ___ 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110–417).

(26)(i) ___ 252.247–7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(ii) ___ Alternate I (MAR 2000) of 252.247–7023.

(iii) ___ Alternate II (MAR 2000) of 252.247–7023.

(iv) ___ Alternate III (MAY 2002) of 252.247–7023.

(27) ___ 252.247–7024, Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AH16

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition Amendments (DFARS Case 2011–D017)

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

ACTION: Final rule.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to correct several anomalies resulting from recent changes relating to source of ball and roller bearing components, eligibility of Peruvian end products under trade agreements, and participation of foreign contractors in acquisitions in support of operations in Afghanistan.

DATES: *Effective Date:* June 6, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to correct several anomalies resulting from recent changes relating to source of ball

and roller bearing components, participation of foreign contractors in acquisitions in support of operations in Afghanistan, and eligibility of Peruvian end products under trade agreements.

A. Restriction on Ball and Roller Bearings

DoD published a proposed rule, Restrictions on Ball and Roller Bearings (DFARS Case 2006–D029), in the **Federal Register** (75 FR 25167) on May 7, 2010 with request for comments. DoD received comments from three respondents and addressed the comments in the publication of the final rule (75 FR 76297) on December 8, 2010. DFARS Case 2006–D029 retained the existing definition of “bearing component”. As used in DFARS part 225 and the DFARS clause 252.225–7016, “bearing component” means the bearing element, retainer, inner race, or outer race (see 252.225–7016(a)). However, that rule added a new requirement at 225.7009–2(a)(2) and 252.225–7016(b)(2) that for each ball or roller bearing, the cost of the bearing components “mined, produced, or manufactured” in the United States or Canada must exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

The phrase “mined, produced, or manufactured” was adopted from the Buy American Act, which applies broadly to many types of items. This rule applies only to bearing components, which are manufactured items and not mined or produced. As used in the DFARS, the term “bearing component” does not refer to the materials that are utilized in the manufacture of the bearing components. There is no restriction with regard to where the iron ore is mined or where the resultant steel in a bearing component is produced. The requirement at 225.7009–2(a)(2) and 252.225–7016(b)(2) that for each ball or roller bearing, the cost of the bearing components “mined, produced, or manufactured” in the United States or Canada must exceed 50 percent of the total cost of the bearing components of that ball or roller bearing, has the same meaning as a requirement that for each ball or roller bearing, the cost of the bearing components “manufactured” in the United States or Canada must exceed 50 percent of the total cost of the bearing components of that ball or roller bearing. The words “mined” and “produced” are extraneous because they are inapplicable, since a ball or roller bearing is manufactured and not mined or produced. Therefore, this final rule under DFARS Case 2011–D017 removes the words “mined, produced, or” and