

**DEPARTMENT OF DEFENSE**

**Defense Acquisitions Regulations System**

**48 CFR Part 225**

RIN 0750-AH50

**Defense Federal Acquisition Regulation Supplement; Trade Agreements Thresholds (DFARS Case 2012-D005)**

**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 incorporate adjusted thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. Additionally, this rule includes language in prescriptions for use of contract clauses intended to clarify their applicability to commercial items.

**DATES:** *Effective Date:* January 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0328.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Every two years, the trade agreements thresholds are adjusted according to a pre-determined formula set forth in the agreements. The United States Trade Representative has specified the following new thresholds in the **Federal Register** (76 FR 76808 December 8, 2011):

Trade agreement	Supply contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA .....	\$202,000	\$7,777,000
FTAs:		
Australia FTA .....	77,494	7,777,000
Bahrain FTA .....	202,000	10,074,262
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) .....	77,494	7,777,000
Chile FTA .....	77,494	7,777,000
Morocco FTA .....	202,000	7,777,000
NAFTA:		
—Canada .....	25,000	10,074,262
—Mexico .....	77,494	10,074,262
Peru FTA .....	202,000	7,777,000
Singapore FTA .....	77,494	7,777,000

**II. Discussion and Analysis**

This final rule implements the new thresholds in the clause prescriptions at DFARS 225.1101 and 225.7503.

**III. 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.

**IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 and

does not require publication for public comment.

**V. Paperwork Reduction Act**

The rule does not contain any 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 Part 225**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 225 is amended as follows:

**PART 225—FOREIGN ACQUISITION**

■ 1. The authority citation for 48 CFR part 225 is revised to read as follows:

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

■ 2. In section 225.1101, revise paragraph (11)(i) to read as follows:

**225.1101 Acquisition of supplies.**

\* \* \* \* \*

(11)(i) Except as provided in paragraph (11)(ii) of this section, use the clause at 252.225-7036, Buy American Act—Free Trade Agreements—Balance

of Payments Program, instead of the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401-70, including acquisitions of commercial items or components, when the estimated value equals or exceeds \$25,000, but is less than \$202,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds \$77,494.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds \$25,000 but is less than \$77,494.

\* \* \* \* \*

■ 3. In section 225.7503, revise paragraphs (a)(1) and (b) to read as follows:

**225.7503 Contract clauses.**

\* \* \* \* \*

(a)(1) Use the clause at 252.225-7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial items or components, with a value

greater than the simplified acquisition threshold but less than \$7,777,000.

\* \* \* \* \*

(b)(1) Use the clause at 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$7,777,000 or more, including acquisitions of commercial items or components.

(2) For acquisitions with a value of \$7,777,000 or more, but less than \$10,074,262, including acquisitions of commercial items or components, use the clause with its Alternate I, unless the acquisition is in support of Afghanistan.

(3) If the acquisition is for construction with a value of \$10,074,262 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of \$7,777,000 or more, but less than \$10,074,262, and is in support of operations in Afghanistan, use the clause with its Alternate III.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

[Docket No. DARS-2011-0082-0002]

RIN 0750-AH48

#### Defense Federal Acquisition Regulation Supplement: New Designated Country—Armenia (DFARS Case 2011-D057)

**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 add Armenia as a World Trade Organization Government Procurement Agreement (WTO GPA) country and a designated country, due to the accession of Armenia to membership in the World Trade Organization Government Procurement Agreement.

**DATES:** *Effective Date:* January 30, 2012.

**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

On September 15, 2011, Armenia became a party to the World Trade Organization Government Procurement Agreement (WTO GPA). The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this waiver authority to the U.S. Trade Representative (see FAR 25.402).

On September 22, 2011, because Armenia became a party to the WTO GPA and because the U.S. Trade Representative has determined that Armenia will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services and suppliers of such products and services, the U.S. Trade Representative published a notice in the **Federal Register** (76 FR 58856) waiving the Buy American Act and other discriminatory provisions for eligible products from Armenia.

##### II. Discussion and Analysis

FAR 25.003 defines WTO GPA countries by listing the parties to the WTO GPA, and defines “designated country” as a WTO GPA country, a Free Trade Agreement country, a least designated country, or a Caribbean Basin country.

Because Armenia is now a WTO GPA country and therefore also a designated country, as determined by the U.S. Trade Representative, this final rule adds Armenia to the lists of WTO GPA countries within the definition of “designated country” at DFARS 252.225-7021, Trade Agreements, and 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements. Conforming changes were also made to the clause date at 252.225-7001(b)(12)(i).

##### III. 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 a significant regulatory action and, therefore, was 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.

##### IV. 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).

Publication of this final rule for public comment is not required by statute (41 U.S.C. 1707) because it recognizes actions taken by the United States Trade Representative that do not have a significant effect 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.

##### V. Paperwork Reduction Act

The Paperwork Reduction Act does apply because the final rule affects the certification and information collection requirement in the provisions at DFARS 252.225-7020, Trade Agreements Certificate, currently approved under OMB clearance 0704-0229, DFARS Part 225, Foreign Acquisition, and associated clauses. DFARS provision 252.225-7020 relies on the definition of “designated country” in DFARS 252.225-7021, which now includes Armenia. The impact, however, is negligible. Comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, in response to approved OMB clearance 0704-0229, should be sent, not later than March 30, 2012 to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Requesters may obtain a copy of the supporting statement for the burden