

252.225-7052 Restriction on the Acquisition of Certain Magnets and Tungsten.

As prescribed in 225.7018-5, use the following clause:

Restriction on the Acquisition of Certain Magnets and Tungsten (APR 2019)

(a) *Definitions.* As used in this clause—
Covered material means—

- (1) Samarium-cobalt magnets;
- (2) Neodymium-iron-boron magnets;
- (3) Tungsten metal powder; and
- (4) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

Covered country means—

- (1) The Democratic People's Republic of North Korea;
- (2) The People's Republic of China;
- (3) The Russian Federation; and
- (4) The Islamic Republic of Iran.

(b) *Restriction.* (1) Except as provided in paragraph (c) of this clause, the Contractor shall not deliver under this contract any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (10 U.S.C. 2533c).

(2) For samarium-cobalt magnets and neodymium iron-boron magnets, this restriction includes—

- (i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and
- (ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals if the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is included in the contract.

(c) *Exceptions.* This clause does not apply—

- (1) To an end item that is—
 - (i) A commercially available off-the-shelf item, other than—
 - (A) A commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or
 - (B) A tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;
 - (ii) An electronic device, unless otherwise specified in the contract; or
 - (iii) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(2) If the authorized agency official concerned has made a nonavailability determination, in accordance with section 225.7018-4 of the Defense Federal Acquisition Regulation Supplement, that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable

price from a source other than a covered country.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219

[Docket DARS-2018-0056]

RIN 0750-AK18

Defense Federal Acquisition Regulation Supplement: Small Business Set-Asides for Architect-Engineer and Construction Design Contracts (DFARS Case 2018-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 implement a section of the National Defense Authorization Act for Fiscal Year 2019 regarding set-asides for architect-engineer and construction design contracts.

DATES: Effective April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571-372-6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 83 FR 62554 on December 4, 2018, to implement section 2804 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232). Section 2804 increases to \$1 million the threshold at 10 U.S.C. 2855 for small business set-asides of acquisitions for architect-engineer services, including construction design, in connection with military construction projects or military family housing projects. In addition, section 2804 removes the prohibition on setting aside these acquisitions valued above the threshold. As a result of these statutory changes, these acquisitions must be set aside for small business, if valued below \$1 million, and may be set aside for small business, if valued at \$1 million or more.

There were no public comments submitted in response to the proposed rule. There are no changes made to the

final rule, except to add a reference to 10 U.S.C. 2855.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses or impact any existing provisions or clauses.

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. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is issuing a final rule to amend the DFARS to implement section 2804 of the NDAA for FY 2019. Section 2804 increases to \$1 million the threshold at 10 U.S.C. 2855 for small business set-asides of acquisitions for architect-engineer services, including construction design, in connection with military construction projects or military family housing projects. In addition, section 2804 removes the prohibition on setting aside these acquisitions valued above the threshold. As a result of these statutory changes, these acquisitions must be set aside for small business, if valued below \$1 million, and may be set aside for small business, if valued at \$1 million or more.

No public comments were received in response to the initial regulatory flexibility analysis.

The rule applies to contract awards for architect-engineer services,

including construction design. Data from the Federal Procurement Data System shows that, during FY 2017 and FY 2018, DoD awarded an average of 229 contracts per year for architect-engineer services to an average of 190 unique small entities per year. In FY 2017 and FY 2018, DoD awarded approximately 30 contracts per year for architect-engineer services valued at more than the prior threshold of \$400,000 and less than the new threshold of \$1 million. This rule requires future contracts in this range to be awarded pursuant to FAR part 19 set-aside procedures. DoD also awarded approximately 284 contracts per year for architect-engineer services valued at more than \$1 million. This rule makes it possible for future contracts at those dollar values to be awarded pursuant to FAR part 19 set-aside procedures. There are more than 27,000 small entities listed in Small Business Administration's Dynamic Small Business Search that provide architect-engineer services. Of these entities, approximately 270 could benefit from this rule.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known, significant alternatives that would meet the requirements of the applicable statute.

VI. 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 219

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 is amended as follows:

PART 219—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for part 219 continues to read as follows:

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

■ 2. Revise section 219.502–1 to read as follows:

219.502–1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for supplies that were developed and financed, in whole or in part, by

Canadian sources under the U.S.-Canadian Defense Development Sharing Program.

219.502–2 [Amended]

■ 3. Amend section 219.502–2, in paragraph (a)(iii), by removing “of under \$400,000” and adding “under \$1 million (10 U.S.C. 2855)” in its place.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 245

[Docket DARS–2016–0035]

RIN 0750–AJ11

Defense Federal Acquisition Regulation Supplement: Use of the Government Property Clause (DFARS Case 2015–D035)

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 expand the prescription for using the Federal Acquisition (FAR) Government property clause.

DATES: Effective April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 73002 on October 21, 2016, to amend DFARS 245.107(1)(i) to require the use of FAR clause 52.245–1, Government Property, in all purchase orders for repair, maintenance, overhaul, or modification of Government property, regardless of the unit acquisition cost of the items to be repaired. One respondent submitted comments in response to the proposed rule.

II. Discussion and Analysis

A. Summary of Significant Changes From the Proposed Rule

There are no changes from the proposed rule.

B. Analysis of Public Comments

1. Support for Continued Discretionary Use of the FAR Clause

Comment: The respondent recommends that DFARS 245.107 be left “as is” and that contracting officers should insert FAR clause 52.245–1 into purchase orders for repair based on the type and cost of property to be repaired.

Response: A determination for when provisions and clauses are used is driven primarily by the goods or services being procured and the type of contract being contemplated. Tying the use of FAR 52.245–1 to only some forms of Government-furnished property (GFP) and not others would be impractical given the variety of property classes, types, values, uses, and conditions. Discretion, in the case of inserting FAR clause 52.245–1 in purchase orders for repair, has led to inconsistent treatment of GFP. Moreover, the discretionary use of FAR 52.245–1 has been shown to drive process inconsistency, compromise accountability, and promote nonstandard processes. This complicates the administration of contracts, particularly upon contract closeout when proper disposition and adjudication of remaining Government property is crucial.

2. Training for Contracting Officers

Comment: The respondent also stated that appropriate training should be provided to contracting officers on use of the Government property clause, rather than require a blanket prescription that fails to incorporate materiality.

Response: The purpose of this rule is to achieve greater accountability of GFP, decrease the risk of misuse or loss of Government property, and mitigate potential ownership issues. As stated previously, tying the use of FAR clause 52.245–1 to a specific property class or type would be impractical given the variety of property types, values, uses, and conditions. By extension, training contracting officers on the potential materiality of asset types relative to the use FAR clause 52.245–1 would be unrealistic and ultimately exacerbate the accountability gap this rule seeks to close.

3. Impact to Small Business

Comment: The respondent states the rule would adversely impact small business participation in repair, maintenance, and calibration activities, and that small businesses would be required to implement costly property systems to comply with the Government