

<https://www.epa.gov/mn/revision-taconite-federal-implementation-plan> or contact Abigail Teener at 312–353–7314 or by email at [Taconite-FIP-Revision@epa.gov](mailto:Taconite-FIP-Revision@epa.gov). The last day to pre-register to present at the hearing will be October 9, 2020. On October 13, 2020, EPA will post a general agenda for the hearing that will list pre-registered presenters in approximate order at: <https://www.epa.gov/mn/revision-taconite-federal-implementation-plan>. Additionally, requests to present will be taken on the day of the hearing as time allows.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Each commenter will have 5 minutes to provide oral testimony. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically by including it in the registration form or emailing it to [Taconite-FIP-Revision@epa.gov](mailto:Taconite-FIP-Revision@epa.gov). EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the virtual public hearing.

EPA is asking all hearing attendees to pre-register, even those who do not intend to present. This will help EPA prepare for the virtual hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/mn/revision-taconite-federal-implementation-plan>. While EPA expects the hearing to go forward as set forth above, please monitor our website or contact Abigail Teener at 312–353–7314 to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing with Abigail Teener at 312–353–7314 or [Taconite-FIP-Revision@epa.gov](mailto:Taconite-FIP-Revision@epa.gov) and describe your needs by October 6, 2020. EPA may not be able to arrange accommodations without advance notice.

#### How can I get copies of the proposed action and other related information?

EPA has established the official public docket for the proposed action under Docket ID No. EPA–R05–OAR–2010–0037. A copy of the proposed

action is also available at <https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2020-01321.pdf>, and any detailed information related to the proposed action will be available in the public docket prior to the public hearing. Verbatim transcripts of the hearing and written statements will be included in the rulemaking docket.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 14, 2020.

**Kurt Thiede,**

*Regional Administrator, Region 5.*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 212, 225, and 252

[Docket DARS–2020–0036]

RIN 0750–AL03

#### Defense Federal Acquisition Regulation Supplement: Source Restrictions on Auxiliary Ship Components (DFARS Case 2020–D017)

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a statute that requires certain auxiliary ship components to be procured from a manufacturer in the national technology and industrial base.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before November 30, 2020, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2019–D017, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Search for “DFARS Case 2020–D017” under the heading “Enter keyword or ID” and selecting “Search.” Select “Comment Now” and follow the instructions provided to submit a comment. Please include “DFARS Case 2020–D017” on any attached documents.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2020–D017 in the subject line of the message.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Bass, OUSD (A&S) DPC/DARS, Room

3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

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

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to amend the DFARS to implement section 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020. Section 853 amends 10 U.S.C. 2534, Miscellaneous limitations on the procurement of goods other than United States goods, to establish limitations on the procurement of large medium-speed diesel engines for contracts awarded for new construction of an auxiliary ship, unless the engines are manufactured in the national technology and industrial base, which includes the United States, Australia, Canada, and the United Kingdom.

##### II. Discussion and Analysis

This proposed rule addresses the restrictions related to auxiliary ship components in DFARS section 225.7010, which already restricts contracting officers from acquiring certain components of naval vessels, to the extent they are unique to marine applications, unless the components are from the national industrial base. Paragraph 225.7010–1(b) is added to include limitations on large medium-speed diesel engines for auxiliary ships for contracts awarded by the Secretary of a military department for new construction of an auxiliary ship using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy.

Language is added at DFARS 225.7010–2, Exceptions, to state that the newly added restriction at 225.7010–1(b) does not apply to contracts or subcontracts that do not exceed the simplified acquisition threshold or to large medium-speed diesel engines for icebreakers or special mission ships.

The waiver criteria at DFARS 225.7008 apply to the restrictions; therefore, a conforming change is made to DFARS 225.7010–3, Waiver, to add a pointer to the restrictions at 225.7010–1. An editorial change is also made to

DFARS 225.7010–4 to add cross-references to 225.7010–1(a).

A new clause, DFARS 252.225–70XX, Restriction on Acquisition of Large Medium-Speed Diesel Engines, is added. The clause applies to acquisitions greater than the simplified acquisition threshold and to contracts using FAR part 12 procedures for the acquisition of commercial items that require large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy. The restriction does not apply to large medium-speed diesel engines for icebreakers or special mission ships. DFARS 212.301 is amended to reflect that the clause will apply to commercial item acquisitions.

DoD seeks public input and feedback on the content of the proposed rule and specifically in regard to a clarifying definition for “large medium-speed diesel engines” for auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy. As noted in the statute, the term “auxiliary ship” does not include an icebreaker or a special mission ship.

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

This rule proposes to create a new DFARS clause, 252.225–70XX, Restriction on Acquisition of Large Medium-Speed Diesel Engines. DoD does not intend to apply the requirements of section 853 of the NDAA for FY 2020 to contracts at or below the simplified acquisition threshold (SAT). Section 853 amends 10 U.S.C. 2534(a) to provide a limitation on components for auxiliary ships. 10 U.S.C. 2534 does not apply to a contract or subcontract for an amount that does not exceed the SAT (see paragraph (g)). Therefore this clause will not apply to acquisitions at or below the SAT. However the rule proposes to apply the clause to contracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items.

#### A. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

10 U.S.C. 2375 governs the applicability of laws to DoD contracts for the acquisition of commercial items, including COTS items, and is intended to limit the applicability of laws to contracts and subcontracts for the

acquisition of commercial items, including COTS items. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items unless—

- The provision of law—
  - Provides for criminal or civil penalties;
  - Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 2533a or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 2533b; or
  - Specifically refers to 10 U.S.C. 2375 and states that it shall apply to contracts and subcontracts for the acquisition of commercial items (including COTS items); or
- USD (A&S) determines in writing that it would not be in the best interest of the Government to exempt contracts or subcontracts for the acquisition of commercial items from the applicability of the provision.

This authority has been delegated to the Principal Director, Defense Pricing and Contracting (DPC).

#### B. Applicability

Section 853 of the NDAA for FY 2020 does not apply to contracts at or below the SAT and is silent on applicability to contracts and subcontracts for the acquisition of commercial items. Also, the statute does not provide for civil or criminal penalties. Therefore, it does not apply to contracts or subcontracts for the acquisition of commercial items unless the Principal Director, DPC, makes a written determination as provided in 10 U.S.C. 2375.

DoD intends to determine that it is in the best interest of the Federal Government to apply the rule to contracts and subcontracts for the acquisition of commercial items, including COTS items, as defined at FAR 2.101. Not applying this rule to contracts and subcontracts for the acquisition of commercial items, including COTS items, would exclude contracts intended to be covered by this rule and undermine the overarching purpose of the rule to restrict the purchase of large medium-speed diesel engines for auxiliary ships, unless the engines are manufactured in the national technology and industrial base, which includes the United States,

Australia, Canada, and the United Kingdom.

### IV. 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.

### V. Executive Order 13771

This rule is not expected to be subject to E.O. 13771, because this rule is not significant under E.O. 12866.

### VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to 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.* Nevertheless, an initial regulatory flexibility analysis has been performed and summarized as follows:

The rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a statute that requires certain auxiliary ship components to be procured from a manufacturer in the national technology and industrial base, which includes the United States, Australia, Canada, and the United Kingdom, subject to exceptions.

The objective and legal basis for the rule is to implement section 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020, which amends 10 U.S.C. 2534, Miscellaneous limitations on the procurement of goods other than United States goods. Section 853 establishes limitations on procurement of large medium-speed diesel engines for contracts awarded by the Secretary of a military department using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy for new construction of an auxiliary ship using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy, unless manufactured

in the United States, Australia, Canada, or the United Kingdom.

DoD reviewed Federal Procurement Data System (FPDS) data for fiscal years (FY) 2017, 2018, and 2019 (excluding contracts or subcontracts that do not exceed the simplified acquisition threshold or acquisitions of spare or repair parts needed to support naval vessels manufactured outside the United States; and large medium-speed diesel engines specifically for icebreakers or special mission ships). The FPDS data reflected that there were a total of 241 awards, of which 121 were made to small businesses, a median of 50 percent awarded to unique small entities over the last three fiscal years.

It is expected that this rule will benefit small businesses. The rule will provide small businesses the opportunity to participate in the manufacture of auxiliary ship components in support of the national technology and industrial base.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the rule that would meet the requirements of the statute.

DoD invites comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2020–D017), in correspondence.

## VII. 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 Parts 212, 225, and 252

Government procurement.

**Jennifer D. Johnson,**  
*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 212, 225, and 252 is proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

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

## PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by adding paragraph (f)(ix)(GG) to read as follows:

### 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

\* \* \* \* \*

(f) \* \* \*

(ix) \* \* \*

(GG) Use the clause at 252.225–70XX, Restriction on Acquisition of Large Medium-Speed Diesel Engines, as prescribed in 225.7010–5, to comply with 10 U.S.C. 2534(a)(6).

## PART 225—FOREIGN ACQUISITION

■ 3. Revise the section 225.7010 heading to read as follows:

### 225.7010 Restrictions on certain naval vessel and auxiliary ship components.

■ 4. Revise section 25.7010–1 to read as follows:

#### 225.7010–1 Restrictions.

In accordance with 10 U.S.C. 2534, unless manufactured in the United States, Australia, Canada, or the United Kingdom, do not acquire—

(a) The following components of naval vessels, to the extent they are unique to marine applications:

- (1) Gyrocompasses.
- (2) Electronic navigation chart systems.
- (3) Steering controls.
- (4) Pumps.
- (5) Propulsion and machinery control systems.

(b) Large medium-speed diesel engines for auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy.

■ 5. Revise section 225.7010–2 to read as follows:

#### 225.7010–2 Exceptions.

(a) The restriction at 225.7010–1(a) does not apply to—

(1) Contracts or subcontracts that do not exceed the simplified acquisition threshold; or

(2) Acquisition of spare or repair parts needed to support components for naval vessels manufactured outside the United States. Support includes the purchase of spare gyrocompasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, or totally enclosed lifeboats, when those from alternate sources are not interchangeable.

(b) The restriction at 225.7010–1(b) does not apply to—

(1) Contracts or subcontracts that do not exceed the simplified acquisition threshold; or

(2) Large medium-speed diesel engines for icebreakers or special mission ships.

■ 6. Revise 225.7010–3 to read as follows:

#### 225.7010–3 Waiver.

The waiver criteria at 225.7008 apply to the restrictions at 225.7010–1.

■ 7. Amend section 225.7010–4 by—

- a. Revising the section heading; and
- b. In paragraphs (a) and (b), removing “this restriction” and adding “the restriction at 225–7010–1(a)” in both places.

The revision reads as follows:

#### 225.7010–4 Implementation of restriction on certain naval vessel components.

\* \* \* \* \*

■ 8. Add section 225.7010–5 to read as follows:

#### 225.7010–5 Contract clause.

Use the clause at 252.225–70XX, Restriction on Acquisition of Large Medium-Speed Diesel Engines, in solicitations and contracts that exceed the simplified acquisition threshold, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that require large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy unless—

(a) An exception at 225.7010–2(b)(2) applies; or

(b) A waiver has been granted.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Add section 252.225–7038 to read as follows:

### 252.225–7038 Restriction on Acquisition of Large Medium-Speed Diesel Engines.

As prescribed in 225.7010–5, use the following clause:

#### Restriction on Acquisition of Large Medium-Speed Diesel Engines (Date)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract large medium-speed diesel engines manufactured in the United States, Australia, Canada, or the United Kingdom.

(End of clause)

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