

separately and should cite DFARS Case 2006–D015.

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.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1031(a)(37) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 1031(a)(37) amended the statutory requirements for submission of a notification to Congress before the award of a contract for architectural and engineering services or construction design in connection with military construction, military family housing, or restoration or replacement of damaged or destroyed facilities. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 236

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 236 is amended as follows:

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 1. The authority citation for 48 CFR Part 236 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 236.601 is revised to read as follows:

§ 236.601 Policy

(1) Written notification to the congressional defense committees is required if the total estimated contract price for architect-engineer services or construction design, in connection with military construction, military family housing, or restoration or replacement of damaged or destroyed facilities, exceeds \$1,000,000. In accordance with 10 U.S.C. 480, unclassified notifications must be provided by electronic medium.

(i) For military construction or military family housing (10 U.S.C. 2807(b)), the notification—

(A) Must include the scope of the project and the estimated contract price; and

(B)(1) If provided by electronic medium, must be provided at least 14 days before the initial obligation of funds; or

(2) If provided by other than electronic medium, must be received by the congressional defense committees at least 21 days before the initial obligation of funds.

(ii) For restoration or replacement of damaged or destroyed facilities (10 U.S.C. 2854(b)), the notification—

(A) Must include the justification for the project, the estimated contract price, and the source of the funds for the project; and

(B)(1) If provided by electronic medium, must be provided at least 7 days before the initial obligation of funds; or

(2) If provided by other than electronic medium, must be received by the congressional defense committees at least 21 days before the initial obligation of funds.

(2) During the applicable notice period, synopsis of the proposed contract action and administrative actions leading to the award may be started.

[FR Doc. E6–16419 Filed 10–3–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AF49

Defense Federal Acquisition Regulation Supplement; Free Trade Agreements—Guatemala and Bahrain (DFARS Case 2006–D028)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the United States-Bahrain Free Trade Agreement and the Dominican Republic-Central America-United States Free Trade Agreement with respect to Guatemala. The Free Trade Agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials and specify

procurement procedures designed to ensure fairness.

DATES: *Effective date:* October 4, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 4, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D028, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *E-mail:* dfars@osd.mil. Include DFARS Case 2006–D028 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

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

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS provisions and clauses to implement the Dominican Republic-Central America-United States Free Trade Agreement, with respect to Guatemala, and the United States-Bahrain Free Trade Agreement. Congress approved these trade agreements in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53) and the United States-Bahrain Free Trade Agreement Implementation Act (Public Law 109–169).

The rule adds Bahrain and Guatemala to the definition of “Free Trade Agreement country.” In addition, the rule removes Guatemala from the definition of “Caribbean Basin country” because, in accordance with Section 201(a)(3) of Public Law 109–53, when the Dominican Republic-Central America-United States Free Trade Agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act.

The dollar thresholds for applicability of the Dominican Republic-Central America-United States Free Trade

Agreement to Guatemala are the same as those for the other countries subject to the agreement. The dollar thresholds for applicability of the Bahrain Free Trade Agreement are \$193,000 for supply and service contracts, and \$8,422,165 for construction contracts.

Like the Morocco Free Trade Agreement, the Bahrain Free Trade Agreement threshold for supplies and services is higher than the thresholds for the other Free Trade Agreements. Therefore, Bahrainian end products are not covered by the Buy American Act-Free Trade Agreements-Balance of Payments Program provision and clause at DFARS 252.225-7035 and 252.225-7036, respectively.

Like the North American Free Trade Agreement, the Bahrain Free Trade Agreement threshold for construction is higher than the thresholds of the other Free Trade Agreements. Therefore, Bahrainian construction material is excluded from coverage under the Balance of Payments Program—Construction Materials Under Trade Agreements clause at DFARS 252.225-7045 for acquisitions less than \$8,422,165.

In addition, this interim rule makes the following editorial changes:

- Removal of the word “instrumentality” from the definitions of “Caribbean Basin country end product,” “Free Trade Agreement country end product,” “least developed country end product,” “Moroccan end product,” and “Canadian end product,” for consistency with the FAR definitions of “end product.” The term “instrumentality,” as used in trade agreements, applies to the European Union. The FAR and DFARS have separately listed each member country of the European Union, so it is unnecessary to continue to refer to instrumentalities in the end product definitions.

- Amendment of the Trade Agreements clause at DFARS 252.225-7021 to add a definition of “WTO GPA country end product” and to update the Internet address for location of the Harmonized Tariff Schedule of the United States.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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.* Although the rule opens up DoD procurement to the products of

Guatemala and Bahrain, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401-70, and procurements that are set aside for small businesses are exempt from application of the trade agreements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006-D028.

C. Paperwork Reduction Act

This interim rule affects the certification and information collection requirements in the provisions at DFARS 252.225-7020 and 252.225-7035, currently approved under Office of Management and Budget Control Number 0704-0229 for use through May 31, 2007. The impact, however, is negligible.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements the Dominican Republic-Central America-United States Free Trade Agreement with respect to Guatemala, and the United States-Bahrain Free Trade Agreement, as approved by Congress in Public Laws 109-53 and 109-169. The agreement with Guatemala took effect on July 1, 2006, and the agreement with Bahrain took effect on August 1, 2006. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

§ 252.212-7001 [Amended]

■ 2. Section 252.212-7001 is amended as follows:

■ a. By revising the clause date to read “(Oct 2006)”;

■ b. In paragraphs (b)(9) and (b)(12)(i) by removing “(Jun 2006)” and adding in its place “(Oct 2006)”;

■ c. In paragraph (b)(12)(ii) by removing “(Jan 2005)” and adding in its place “(Oct 2006)”.

■ 3. Section 252.225-7013 is amended by revising the clause date and paragraph (a)(2)(ii) to read as follows:

§ 252.225-7013 Duty-Free Entry

* * * * *

Duty-Free Entry (Oct 2006)

(a) * * *

(2) * * *

(ii) *Free Trade Agreement country end product*, other than a *Bahrainian end product* or a *Moroccan end product*, as defined in the Buy American Act-Free Trade Agreements-Balance of Payments Program clause of this contract; or

* * * * *

■ 4. Section 252.225-7021 is amended as follows:

■ a. By revising the clause date;

■ b. In paragraph (a)(1)(i)(B), in the first sentence, by removing “or instrumentality”;

■ c. By revising paragraph (a)(3)(ii);

■ d. In paragraph (a)(3)(iv) by removing “Guatemala,”;

■ e. In paragraph (a)(6)(ii) in the first sentence, and in paragraph (a)(7)(ii) in the first sentence, by removing “or instrumentality”;

■ f. By adding paragraph (a)(13); and

■ g. In paragraph (e) introductory text by revising the first sentence. The revised and added text reads as follows:

§ 252.225-7021 Trade Agreements

* * * * *

Trade Agreements (Oct 2006)

(a) * * *

(3) * * *

* * * * *

(ii) A *Free Trade Agreement country* (Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

* * * * *

(13) *WTO GPA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different

article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

* * * * *

(e) The HTSUS is available on the Internet at <http://www.usitc.gov/tata/hts/bychapter/index.htm>. * * *

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■ 5. Section 252.225–7035 is amended by revising the clause date and paragraphs (a), (b)(2), (c)(2)(ii), and Alternate I to read as follows:

§ 252.225–7035 Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate

* * * * *

Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate (Oct 2006)

(a) *Definitions. Bahrainian end product, domestic end product, Free Trade Agreement country end product, foreign end product, Moroccan end product, qualifying country end product, and United States* have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) * * *

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) * * *

(2) * * *

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products:

(Line Item Number) (Country of Origin)

* * * * *

Alternate I (Oct 2006)

As prescribed in 225.1101(9), substitute the phrase *Canadian end product* for the phrases *Bahrainian end product, Free Trade Agreement country end product, and Moroccan end product* in

paragraph (a) of the basic provision; and substitute the phrase *Canadian end products* for the phrase *Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products* in paragraphs (b) and (c)(2)(ii) of the basic provision.

■ 6. Section 252.225–7036 is amended as follows:

■ a. By revising the clause date;

■ b. By redesignating paragraphs (a)(1) through (11) as paragraphs (a)(2) through (12) respectively;

■ c. By adding a new paragraph (a)(1);

■ d. By revising newly designated paragraph (a)(6);

■ e. In newly designated paragraphs (a)(7)(ii) and (a)(8)(ii), in the first sentence of each, by removing “or instrumentality”;

■ f. By revising paragraph (c);

■ g. In Alternate I by revising the date to read “(OCT 2006)”;

■ h. In Alternate I, in paragraph (a)(4)(ii), in the first sentence, by removing “or instrumentality”. The revised and added text reads as follows:

§ 252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program

* * * * *

Buy American Act—Free Trade Agreements—Balance of Payments Program (Oct 2006)

(a) * * *

(1) *Bahrainian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

* * * * *

(6) *Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore;

* * * * *

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end

products, Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, or, at the Contractor's option, a domestic end product.

* * * * *

■ 7. Section 252.225–7045 is amended as follows:

■ a. By revising the clause date;

■ b. In paragraph (a), in the definition of “Designated country”, by revising the parenthetical in paragraph (2) to read “(Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore)”;

■ c. In paragraph (a), in the definition of “Designated country”, by removing “Guatemala,” from paragraph (4); and

■ d. By revising Alternate I to read as follows:

§ 252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements

* * * * *

Balance of Payments Program—Construction Material under Trade Agreements (Oct 2006)

* * * * *

Alternate I (Oct 2006)

As prescribed in 225.7503(b), add the following definition of *Bahrainian or Mexican construction material* to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

Bahrainian or Mexican construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by

providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than

Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition

threshold in Part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”].

[FR Doc. E6–16418 Filed 10–3–06; 8:45 am]

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