

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002–D002]

Defense Federal Acquisition Regulation Supplement; Codification and Modification of Berry Amendment

AGENCY: 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 Section 832 of the National Defense Authorization Act for Fiscal Year 2002. Section 832 codifies and modifies the provision of law known as the “Berry Amendment,” which requires the acquisition of certain items from domestic sources.

EFFECTIVE DATE: April 26, 2002.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before June 25, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002–D002 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D002.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

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

SUPPLEMENTARY INFORMATION:**A. Background**

This interim rule implements Section 832 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107). Section 832 codifies and makes minor modifications to the provision of law known as the Berry Amendment (formerly 10 U.S.C. 2241 note, Limitations on Procurement of Food, Clothing, and Specialty Metals Not Produced in the United States; now codified at 10 U.S.C. 2533a).

The rule updates statutory references in the DFARS text, and clarifies the DFARS text by specifying that—

- The domestic source requirements apply to listed items acquired either as end products or as components of end products;
- For foods manufactured or processed in the United States, an exception to the domestic source requirement applies regardless of where the foods (and any component) were grown or produced; and
- The clause at 252.225–7012, Preference for Certain Domestic Commodities, does not apply to end products incidentally incorporating minor amounts of cotton, other natural fibers, or wool.

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.*, because the rule is intended to clarify existing policy pertaining to the acquisition of certain items from domestic sources. Therefore, DoD has not prepared 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 2002–D002.

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 832 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107). Section 832 codifies and modifies the provision of law known as the “Berry Amendment,” which requires the acquisition of certain items from domestic sources. Section 832 became effective upon enactment,

on December 28, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

2. Section 225.7001 is amended by removing paragraph (c); redesignating paragraph (b) as paragraph (c); and adding a new paragraph (b) to read as follows:

225.7001 Definitions.

* * * * *

(b) *Component* and *end product* are defined in the clause at 252.225–7012, Preference for Certain Domestic Commodities.

* * * * *

3. Sections 225.7002–1 and 225.7002–2 are revised to read as follows:

225.7002–1 Restrictions.

The following restrictions implement 10 U.S.C. 2533a. Except as provided in subsection 225.7002–2, do not acquire—

(a) Any of the following items, either as end products or components, unless the items have been grown, reprocessed, reused, or produced in the United States:

- (1) Food.
- (2) Clothing.
- (3) Tents, tarpaulins, or covers.
- (4) Cotton and other natural fiber products.

- (5) Woven silk or woven silk blends.
- (6) Spun silk yarn for cartridge cloth.
- (7) Synthetic fabric or coated

synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

- (8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (a).

(b) Specialty metals, including stainless steel flatware, unless the

metals were melted in steel manufacturing facilities located within the United States.

(c) Hand or measuring tools, unless the tools were produced in the United States.

225.7002-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in 225.7002-1:

(a) Acquisitions at or below the simplified acquisition threshold.

(b) Acquisitions of any of the items in 225.7002-1(a) or (b), if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices.

(c) Acquisitions of items listed in FAR 25.104(a), unless the items are hand or measuring tools.

(d) Acquisitions outside the United States in support of combat operations.

(e) Acquisitions of perishable foods by activities located outside the United States for personnel of those activities.

(f) Emergency acquisitions by activities located outside the United States for personnel of those activities.

(g) Acquisitions by vessels in foreign waters.

(h) Acquisitions of items specifically for commissary resale.

(i) Acquisitions of end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool—

(1) Is not more than 10 percent of the total price of the end product; and

(2) Does not exceed the simplified acquisition threshold.

(j) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced.

(k) Purchases of specialty metals by subcontractors at any tier for programs other than—

(1) Aircraft;

(2) Missile and space systems;

(3) Ships;

(4) Tank-automotive;

(5) Weapons; and

(6) Ammunition.

(l) Acquisitions of specialty metals and chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country (see 225.872).

(m) Acquisitions of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if—

(1) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(i) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(ii) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(iii) Upholstered seats (whether for household, office, or other use); and

(iv) Parachutes (Federal Supply Class 1670); or

(2) The fibers and yarns are para-aramid fibers and yarns manufactured in—

(i) The Netherlands; or

(ii) Another qualifying country (see 225.872) if the Under Secretary of Defense (Acquisition, Technology, and Logistics) makes a determination in accordance with Section 807 of Public Law 105-261 that—

(A) Procuring articles that contain only para-aramid fibers and yarns manufactured from suppliers within the United States would result in sole source contracts or subcontracts for the supply of such para-aramid fibers and yarns;

(B) Such sole source contracts or subcontracts would not be in the best interest of the Government or consistent with the objectives of the Competition in Contracting Act (10 U.S.C. 2304); and

(C) The qualifying country permits U.S. firms that manufacture para-aramid fibers and yarns to compete with foreign firms for the sale of para-aramid fibers and yarns in that country.

4. Section 225.7002-3 is amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

225.7002-3 Contract clauses.

Unless an exception applies—

(a) Use the clause at 252.225-7012, Preference for Certain Domestic Commodities, in solicitations and contracts exceeding the simplified acquisition threshold.

(b)(1) Use the clause at 252.225-7014, Preference for Domestic Specialty Metals, in solicitations and contracts exceeding the simplified acquisition threshold that require delivery of an article containing specialty metals.

(2) Use the clause with its Alternate I in solicitations and contracts exceeding the simplified acquisition threshold requiring delivery, for one of

the following major programs, of an article containing specialty metals:

(i) Aircraft.

(ii) Missile and space systems.

(iii) Ships.

(iv) Tank-automotive.

(v) Weapons.

(vi) Ammunition.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 [Amended]

5. Section 252.212-7001 is amended as follows:

a. By revising the clause date to read “APR 2002”;

b. In paragraph (b), in the entry “252.225-7012”, by removing “(AUG 2000) (10 U.S.C. 2241 note)” and adding in its place “(APR 2002) (10 U.S.C. 2533a)”;

c. In paragraph (b), in the entries “252.225-7014” and “252.225-7015”, by removing “(10 U.S.C. 2241 note)” and adding in its place “(10 U.S.C. 2533a)”;

d. In paragraph (c), in the entry “252.225-7014”, by removing “(10 U.S.C. 2241 note)” and adding in its place “(10 U.S.C. 2533a)”.

6. Section 252.225-7012 is revised to read as follows:

252.225-7012 Preference for Certain Domestic Commodities.

As prescribed in 225.7002-3(a), use the following clause:

Preference for Certain Domestic Commodities (Apr 2002)

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

(1) *Component* means any item supplied to the Government as part of an end product or of another component.

(2) *End product* means supplies delivered under a line item of this contract.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico:

(1) Food.

(2) Clothing.

(3) Tents, tarpaulins, or covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool—

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the simplified acquisition threshold in FAR part 2;

(3) To foods that have been manufactured or processed in the United States, its possessions, or Puerto Rico, regardless of where the foods (and any component if applicable) were grown or produced;

(4) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or

(5) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/ tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(End of clause)

[FR Doc. 02-10094 Filed 4-25-02; 8:45 am]

BILLING CODE 5001-08-U

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 2001-D002]

Defense Federal Acquisition Regulation Supplement; Research and Development Streamlined Contracting Procedures

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate the requirement for posting of solicitations at the Research and Development Streamlined Solicitation Web site. Posting of

solicitations at this Web site is no longer necessary, because contracting activities now make synopses and solicitations available to the public through the Governmentwide point of entry (FedBizOpps).

EFFECTIVE DATE: April 26, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-1302; facsimile (703) 602-0350. Please cite DFARS Case 2001-D002.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS subpart 235.70 contains streamlined procedures for acquiring research and development using a standard solicitation and contract format. The standard format is available on the Research and Development Streamlined Solicitation (RDSS) Web site at <http://www.rdss.osd.mil>. This final rule revises DFARS 235.7003-2 to eliminate the requirement for posting of individual solicitations at the RDSS Web site. Contracting activities now make synopses and solicitations available to the public through the Governmentwide point of entry (FedBizOpps), in accordance with FAR 5.102 and 5.203.

DoD published a proposed rule at 66 FR 63348 on December 6, 2001. DoD received no comments on the proposed rule. Therefore, DoD is adopting the proposed rule as a final rule without change.

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 certifies that this final rule will not 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.*, because the rule does not significantly change solicitation procedures or limit public access to solicitation information.

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.*

List of Subjects in 48 CFR Part 235

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 235 is amended as follows:

1. The authority citation for 48 CFR Part 235 continues to read as follows:

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

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. Section 235.7003-2 is revised to read as follows:

235.7003-2 RDSS process.

(a) *Synopsis.* The synopsis required by FAR 5.203 shall include—

(1) The information required by FAR 5.207; and

(2) A statement that the solicitation will be issued in the research and development streamlined solicitation format shown at the RDSS/C Web site.

(b) *Solicitation.*

(1) The solicitation, to be made available consistent with the requirements of FAR 5.102—

(i) Shall be in the format shown at the RDSS/C Web site;

(ii) Shall include the applicable version number of the RDSS standard format; and

(iii) Shall incorporate by reference the appropriate terms and conditions of the RDSS standard format.

(2) To encourage preparation of better cost proposals, consider allowing a delay between the due dates for technical and cost proposals.

[FR Doc. 02-10092 Filed 4-25-02; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 020419092-2092-01 ; I.D. 041802E]

RIN 0648-AP97

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.