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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS-2015-0053]

RIN 0750-AI77

Defense Federal Acquisition Regulation Supplement: Buy American and Balance of Payments Program—Clause Prescription (DFARS Case 2015-D037)

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 clarify how the clause prescription addresses applicability when an exception to the Buy American statute or Balance of Payments Program applies.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Stiller, telephone 571-372-6176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 80 FR 72672 on November 20, 2015, to revise the DFARS to clarify when it is appropriate to omit DFARS clause 252.225-7001 with regard to exceptions to the Buy American statute and Balance of Payment Program. There were no public comments submitted in response to the proposed rule. There are no changes from the proposed rule made in the final rule.

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

The clause at DFARS 252.225-7001, Buy American Act and Balance of Payments Program, applies to acquisitions at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items. This rule merely clarifies when it is appropriate to omit DFARS clause 252.225-7001 in accordance with existing exceptions to the Buy American statute and Balance of Payment Program.

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

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

This rule is necessary to ensure that contracting officers do not mistakenly omit the clause at DFARS 252.225-7001, Buy American and Balance of Payments Program, when it is appropriate for inclusion in a solicitation and contract. The objective of the rule is to clarify the prescription for use of DFARS clause 252.225-7001 to state that the clause does not apply when the acquisition is for supplies for use either within the United States and an exception to the Buy American statute applies, or outside the United States and an exception to the Balance of Payments Program applies.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

This rule will apply to small entities that are awarded contracts that contain DFARS clause 252.225-7001; however, there is no impact on these small entities because the rule merely clarifies the clause prescription to correctly address applicability when an exception to the Buy American statute or Balance of Payments Program applies.

The rule does not impose any additional reporting, recordkeeping, or other compliance requirements.

No alternatives were identified that will accomplish the objectives of the rule.

IV. 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.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for part 225 continues to read as follows:

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

225.1100 [Amended]

2. In section 225.1100, remove "Subparts" in two places and add "subparts" in their place.

3. Amend section 225.1101 by—

a. Revising paragraph (2) (i) (C);

b. Redesignating paragraphs (2) (i) (D) and (E) as paragraphs (2) (i) (E) and (F); and

c. Adding a new paragraph (2) (i) (D).

The revision and addition read as follows:

225.1101 Acquisition of supplies.

* * * * *

(2) (i) * * *

(C) The acquisition is for supplies for use within the United States and an exception to the Buy American statute applies, e.g., nonavailability or public interest (see FAR 25.103 and 225.103);

(D) The acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies (see 225.7501);

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