



(Billing Code 5001-06)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 225**

**[Docket DARS-2016-0007]**

**RIN 0750-AI88**

**Defense Federal Acquisition Regulation Supplement: Treatment of Interagency and State and Local Purchases (DFARS Case 2016-D009)**

**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 2016 that is entitled "Treatment of Interagency and State and Local Purchases." This section provides that contracts executed by DoD as a result of the transfer of contracts from the General Services Administration or for which DoD serves as an item manager for products on behalf of the General Services Administration shall not be subject to certain domestic source restrictions, to the extent that such contracts are for the purchase of products by other Federal agencies or State or local governments.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, telephone 571-372-6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule in the Federal Register at 81 FR 17053 on March 25, 2016, to implement section 897 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92). Section 897 provides that contracts executed by DoD as a result of the transfer of contracts from the General Services Administration or for which DoD serves as an item manager for products on behalf of the General Services Administration shall not be subject to the requirements under 10 U.S.C. chapter 148 (National Defense Technology and Industrial Base, Defense Investment, and Defense Conversion), to the extent that such contracts are for the purchase of products by other Federal agencies or State or local governments. One respondent submitted public comments in response to the proposed rule.

**II. Discussion and Analysis**

There are no changes from the proposed rule made in the final rule. The one respondent that submitted a comment fully supported the proposed rule.

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

This case does not add any new provisions or clauses or impact any existing provisions or clauses.

### **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. 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 implements section 897 of the National Defense Authorization Act for Fiscal Year 2016. The objective of this rule is to eliminate the domestic source restrictions of 10 U.S.C. chapter 148 when contracts executed by DoD as a result of the transfer of contracts from the General Services Administration or for which DoD serves as an item manager for products on behalf of the General Services Administration, to the extent that such contracts are for the purchase of products by other Federal agencies or State or local governments.

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

DoD does not anticipate frequent application of this rule. The rule removes the domestic source restriction for the specified items in the specified circumstances. In the rare instance in which the circumstances of the statute apply, it is possible that an item could be acquired from a foreign source, rather than a domestic source, which could potentially be a small business. It is not possible to estimate the number of small entities that may be affected, because it is unknown the extent to which the given circumstances may occur.

There are no projected reporting, recordkeeping, or other compliance requirements.

DoD has not identified any alternatives that would minimize any economic impact on small entities and still meet the requirements of the 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 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 48 CFR part 225 continues to read as follows:

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

2. Amend section 225.7002-2 by adding paragraph (o) to read as follows:

#### **225.7002-2 Exceptions.**

\* \* \* \* \*

(o) Acquisitions that are interagency, State, or local purchases that are executed by DoD as a result of the transfer

of contracts from the General Services Administration or for which DoD serves as an item manager for products on behalf of the General Services Administration. According to section 897 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), such contracts shall not be subject to requirements under chapter 148 of title 10, United States Code (including 10 U.S.C. 2533a), to the extent such contracts are for purchases of products by other Federal agencies or State or local governments.

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