



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS-2016-0021]

RIN 0750-AI97

**Defense Federal Acquisition Regulation Supplement: New
Qualifying Countries-Japan and Slovenia (DFARS Case 2016-D023)**

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 add Japan and Slovenia as qualifying countries.

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

FOR FURTHER INFORMATION CONTACT: Ms. Jo Ann Reilly, telephone 571-372-6176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to add Japan and Slovenia as qualifying countries. The Secretary of Defense recently signed reciprocal defense procurement agreements with these countries. These agreements were placed into force on June 4, 2016, for

Japan and June 21, 2016, for Slovenia. The agreements remove discriminatory barriers to procurements of supplies and services produced by industrial enterprises of the other country to the extent mutually beneficial and consistent with national laws, regulations, policies, and international obligations. These agreements do not cover construction or construction material. Japan and Slovenia are already designated countries under the World Trade Organization Government Procurement Agreement.

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

This rule only updates the list of qualifying countries in the DFARS by adding the newly qualifying countries of Japan and Slovenia. The definition of "qualifying country" is updated in each of the following clauses; however, this revision does not impact the clause prescriptions for use, or applicability at or below the simplified acquisition threshold, or applicability to commercial items. The clauses are: DFARS 252.225-7001, Buy American and Balance of Payments Program; DFARS 252.225-7002, Qualifying Country Sources as Subcontractors; DFARS 252.225-7012, Preference for Certain Domestic Commodities; DFARS 252.225-7017, Photovoltaic Devices; DFARS 252.225-7021, Trade Agreements; and DFARS 252.225-7036, Buy American-Free Trade Agreements-Balance of Payments Program.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled "Publication of Proposed Regulations." Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and does not have a significant cost or administrative impact on contractors or offerors. Japan and Slovenia are added to the list of 23 other countries that have similar reciprocal defense procurement agreements with DoD. These requirements affect only the internal operating procedures of the Government.

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

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

The rule affects the certification and information collection requirements in the clause 252.225-7021, Trade Agreements, currently approved under OMB Control Number 0704-229, entitled "DFARS Part 225, Foreign Acquisition, and related clauses," in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because it merely shifts the category under which items from Japan and Slovenia must be listed.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

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. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.003 [Amended]

2. Section 225.003 is amended in paragraph (10), the definition of "qualifying country", by adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.

225.872-1 [Amended]

3. Section 225.872-1 is amended in paragraph (a) by adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7001 [Amended]

4. Section 252.225-7001 is amended by—
 - a. In the clause heading, removing the date "(NOV 2014)" and adding "(AUG 2016)" in its place;

b. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively; and

c. In the Alternate I clause heading—

i. Removing the date "(NOV 2014)" and adding "(AUG 2016)" in its place; and

ii. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.

252.225-7002 [Amended]

5. Section 252.225-7002 is amended by—

a. In the clause heading, removing the date "(DEC 2012)" and adding "(AUG 2016)" in its place; and

b. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.

252.225-7012 [Amended]

6. Section 252.225-7012 is amended by—

a. In the clause heading, removing the date "(FEB 2013)" and adding "(JUL 2016)" in its place; and

b. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.

252.225-7017 [Amended]

7. Section 252.225-7017 is amended by-

a. In the clause heading, removing the date "(JUN 2016)" and adding "(AUG 2016)" in its place; and

b. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.

252.225-7021 [Amended]

8. Section 252.225-7021 is amended by-

a. In the clause heading, removing the date "(JUN 2015)" and adding "(AUG 2016)" in its place; and

b. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively; and

c. In the Alternate II clause heading-

i. Removing the date "(JUN 2015)" and adding "(AUG 2016)" in its place; and

ii. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.

252.225-7036 [Amended]

9. Section 252.225-7036 is amended by-

a. In the clause heading, removing the date "(NOV 2014)" and adding "(AUG 2016)" in its place; and

- b. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively; and
- c. In the Alternate I clause heading–
 - i. Removing the date "(NOV 2014)" and adding "(AUG 2016)" in its place; and
 - ii. In paragraph (a) definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.
- d. In the Alternate II clause heading–
 - i. Removing the date "(NOV 2014)" and adding "(AUG 2016)" in its place; and
 - ii. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.
- e. In the Alternate III clause heading–
 - i. Removing the date "(NOV 2014)" and adding "(AUG 2016)" in its place; and
 - ii. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.
- f. In the Alternate IV clause heading–
 - i. Removing the date "(NOV 2014)" and adding "(AUG 2016)" in its place; and

ii. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.

g. In the Alternate V clause heading—

i. Removing the date "(NOV 2014)" and adding "(AUG 2016)" in its place; and

ii. In paragraph (a), the definition of "qualifying country", adding, in alphabetical order, the countries of "Japan" and "Slovenia", respectively.

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