



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS-2019-0037]

RIN 0750-AK68

Defense Federal Acquisition Regulation Supplement: New World Trade Organization Government Procurement Agreement Country—Australia (DFARS Case 2019-D032)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add Australia as a new World Trade Organization Government Procurement Agreement (WTO GPA) country.

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

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, telephone 571-372-6104.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 2018, the World Trade Organization (WTO) Committee on Government Procurement approved the accession of

Australia to the WTO Agreement on Government Procurement (GPA). Australia submitted its instrument of accession to the Secretary-General of the WTO on April 5, 2019. The WTO GPA entered into force for Australia on May 5, 2019. The United States, which is also a party to the WTO GPA, has agreed to waive discriminatory purchasing requirements for eligible products and suppliers of Australia.

The Trade Agreements Act (19 U.S.C. 2501 et seq.) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this authority to the U.S. Trade Representative.

The U.S. Trade Representative has determined that Australia will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services. The U.S. Trade Representative published a notice in the *Federal Register* (84 FR 18110, April 29, 2019) waiving the Buy American Act and other discriminatory provisions for eligible products from Australia.

Therefore, this rule adds Australia to the list of WTO GPA countries wherever it appears in the DFARS, as part of the definition of "World Trade Organization Government Procurement Agreement Country."

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

This rule does not create any new provisions or clauses or impact any existing provisions or clauses, except for adding "Australia" to the definition of "World Trade Organization Government Procurement Agreement Country" in the stated DFARS clauses. It does not impact the applicability at or below the simplified acquisition threshold, or applicability to commercial items.

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 has no significant cost or

administrative impact on contractors or offerors. This final rule is just updating the "World Trade Organization Government Procurement Agreement Country" lists in order to reflect that Australia is now a member of the WTO GPA to conform to the determination by the U.S. Trade Representative. Australia is already a designated country as it is a "Free Trade Agreement Country."

IV. Executive Orders 12866 and 13563

Executive Order (E.O.s) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, 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 is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

The Paperwork Reduction Act does apply. However, this rule does not affect the response of an offeror that is offering a product of Australia to the information collection requirements in the provisions at DFARS 252.225-7017, 252.225-7021, and 252.225-7045, currently approved under OMB Control Number 0704-0229, entitled Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and related clauses, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Australia is already a designated country, because it is a Free Trade Agreement country.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, 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. 1303 and 48 CFR chapter 1.

252.225-7017 [Amended]

2. Amend section 252.225-7017 by-

a. Removing the clause date of "(DEC 2018)" and adding "(AUG 2019)" in its place; and

b. In paragraph (a), in the definition of "designated country" in paragraph (1), adding, in alphabetical order, the country of "Australia".

252.225-7021 [Amended]

3. Amend section 252.225-7021 by-

a. In the basic clause-

i. Removing the clause date of "(DEC 2017)" and adding "(AUG 2019)" in its place;

ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding in alphabetical order, the country of "Australia";

b. In the Alternate II clause-

- i. Removing the clause date of "(DEC 2017)" and adding "(AUG 2019)" in its place; and
- ii. In paragraph (a) in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Australia".

252.225-7045 [Amended]

3. Amend section 252.225-7045 by-

a. In the basic clause-

- i. Removing the clause date of "(SEP 2016)" and adding "(AUG 2019)" in its place;

- ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding in alphabetical order, the country of "Australia";

b. In the Alternate I clause-

- i. Removing the clause date of "(SEP 2016)" and adding "(AUG 2019)" in its place;

- ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Australia";

c. In the Alternate II clause-

- i. Removing the clause date of "(SEP 2016)" and adding "(AUG 2019)" in its place;

ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order the country of "Australia".

d. In the Alternate III clause-

i. Removing the clause date of "(SEP 2016)" and adding "(AUG 2019)" in its place;

ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order the country of "Australia".

* * * * *

[FR Doc. 2019-16772 Filed: 8/8/2019 8:45 am; Publication Date: 8/9/2019]