



001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS-2019-0069]

RIN 0750-AK75

Defense Federal Acquisition Regulation Supplement: Trade Agreements Thresholds (DFARS Case 2019-D035)

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 incorporate revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: Effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, 571-372-6174.

SUPPLEMENTARY INFORMATION:

I. Background

This rule adjusts thresholds for application of the World Trade Organization (WTO) Government Procurement Agreement (GPA)

and Free Trade Agreements (FTA) as determined by the United States Trade Representative (USTR). The trade agreements thresholds are adjusted every two years according to predetermined formulae set forth in the agreements. The USTR has specified the following new thresholds (84 FR 70615, December 23, 2019) :

Trade Agreement	Supply Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	\$182,000	\$7,008,000
FTAs:		
Australia FTA	83,099	7,008,000
Bahrain FTA	182,000	10,802,884
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	83,099	7,088,000
Chile FTA	83,099	7,088,000
Columbia	83,099	7,088,000
Korea	100,000	7,008,000
Morocco FTA	182,000	7,008,000
NAFTA:		
-Canada	83,099	10,802,884
-Mexico	83,099	10,802,884
Panama FTA	182,000	7,008,000
Peru FTA	182,000	7,008,000
Singapore FTA	83,099	7,008,000

II. 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. This final rule only adjusts the trade agreements thresholds according to predetermined formulae to adjust for changes in economic conditions, thus maintaining the status quo, without significant effect beyond the internal operating procedures of the Government.

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

This rule amends the DFARS to revise thresholds for application of the WTO GPA and the FTA. The revisions do not add any new burdens or impact applicability of clauses and provisions at or below the simplified acquisition threshold, or to commercial items.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 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. The Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This 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

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

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C chapter 35) does apply, because the final rule affects the prescriptions for use of the certification and information collection requirements in the provision at DFARS 252.225-7035, Buy American-Free Trade Agreements-Balance of Payments Program Certificate, and the certification and information collection requirements in the provision at DFARS 252.225-7018, Photovoltaic Devices-Certificate. The changes to these DFARS clauses do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0229, entitled "DFARS Part 225, Foreign Acquisition and related clauses," because the threshold changes are in line with inflation and maintain the status quo.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer Lee Hawes

Regulatory Control Officer, 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

225.1101 [Amended]

2. Amend section 225.1101 by—

a. In paragraph (6) introductory text, removing “\$180,000” and adding “\$182,000” in its place;

b. In paragraph (10)(i) introductory text, removing “\$180,000” and adding “\$182,000” in its place;

c. In paragraph (10)(i)(A), removing “\$180,000” and adding “\$182,000” in its place;

d. In paragraph (10)(i)(B), removing “\$80,317” and adding “\$83,099” in its place;

e. In paragraph (10)(i)(C), removing “\$180,000” and adding “\$182,000” in its place; and

f. In paragraphs (10)(i)(D) through (F), removing “\$80,317” wherever it appears and adding “\$83,099” in its place.

225.7017-3 [Amended]

3. Amend section 225.7017-3, in paragraph (b), by removing “\$180,000” and adding “\$182,000” in its place.

225.7503 [Amended]

4. Amend section 225.7503 by—

- a. In paragraphs (a) and (b) introductory text, removing “\$6,932,000” and adding “\$7,008,000” in both places;
- b. In paragraph (b) (1), removing “\$10,441,216” and adding “\$10,802,884” in its place;
- c. In paragraph (b) (2), removing “\$6,932,000” and adding “\$7,008,000” in its place, and removing “\$10,441,216” and adding “\$10,802,884” in its place;
- d. In paragraph (b) (3), removing “\$10,441,216” and adding “\$10,802,884” in its place; and
- e. In paragraph (b) (4), removing “\$6,932,000” and adding “\$7,008,000” in its place, and removing “\$10,441,216” and adding “\$10,802,884” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7017 [Amended]

5. Amend section 252.225-7017 by—

- a. Removing clause date “(AUG 2019)” and adding “(JAN 2020)” in its place;
- b. In paragraphs (c) (2) and (3), removing “\$80,317” and adding “\$83,099” in its place; and
- c. In paragraphs (c) (4) and (5), removing “\$180,000” and adding “\$182,000” in its place.

252.225-7018 [Amended]

6. Amend section 252.225-7018 by—
 - a. Removing clause date “(DEC 2018)” and adding “(JAN 2020)” in its place;
 - b. In paragraph (b) (1) introductory text, removing “\$180,000” and adding “\$182,000” in its place;
 - c. In paragraph (b) (2), removing “\$180,000” and adding “\$182,000” in its place;
 - d. In paragraphs (d) (3) and (4) introductory text, removing “\$80,317” and adding “\$83,099” in both places; and
 - e. In paragraphs (d) (5) and (6) introductory text, removing “\$180,000” and adding “\$182,000” in both places.

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