



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS-2023-0003]

RIN 0750-AL60

Defense Federal Acquisition Regulation Supplement: Restriction on Acquisition of Personal Protective Equipment and Certain Items from Non-Allied Foreign Nations (DFARS Case 2022-D009)

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

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2022 that restricts the acquisition of personal protective equipment and certain other items from the Democratic People's Republic of North Korea, the People's Republic of China, the Russian Federation, and the Islamic Republic of Iran.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 703-717-3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 88 FR 6600 on January 31, 2023, to implement section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117-81) (10 U.S.C. 2533e) and section 881 of the NDAA for FY 2023 (Pub. L. 117-263). Section 802 adds the restriction to 10 U.S.C. 2533e (transferred to 10 U.S.C. 4875) that limits the acquisition of covered items (personal protective equipment and certain other items) from any of the following covered countries, subject to exceptions: the Democratic People's Republic of North Korea, the People's Republic of China, the Russian Federation, and the Islamic Republic of Iran.

There were no public comments submitted in response to the interim rule. Minor changes are made throughout the rule to remove references to section 802 of the NDAA for FY 2022. Those references are unnecessary, because section 802 has been codified at 10 U.S.C. 4875, which is referenced in the rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, and Commercial Services

The clause at DFARS 252.225-7061, Restriction on the Acquisition of Personal Protective Equipment and Certain Other Items from Non-Allied Foreign Nations, is prescribed at DFARS 225.7023-4 for use in solicitations and contracts with an estimated value above \$150,000, including solicitations and

contracts using FAR part 12 procedures for the acquisition of commercial products, including COTS items, and commercial services, that are for the acquisition of covered items for use within the United States. Consistent with the determination that DoD made with regard to the application of the requirements of section 802 of the NDAA for FY 2022, DFARS clause 252.225-7061 applies to acquisitions above \$150,000 and to contracts for the acquisition of commercial products, including COTS items, and commercial services.

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.

IV. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of

Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

V. Regulatory Flexibility Act

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

This final rule is necessary to finalize an interim rule that revised the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117-81) (10 U.S.C. 2533e, transferred to 10 U.S.C. 4875). Section 802 restricts the acquisition of a covered item, defined as an article or item of personal protective equipment for use in preventing the spread of disease, such as by exposure to infected individuals or contamination or infection by infectious material, or other items for sanitizing and disinfecting, testing, gauze, and bandages, from The Democratic People's Republic of North Korea, The People's Republic of China, The Russian Federation, or The Islamic Republic of Iran. The objective of the rule is to finalize the implementation of section 802 of the NDAA for FY 2022.

There were no public comments received in response to the initial regulatory flexibility analysis.

Based on data from the Federal Procurement Data System for FY 2019, 2020, and 2021, DoD awarded an average of 1,677 contracts in the United States that equaled or exceeded \$150,000 in value and were for the acquisition of medical, dental, or veterinary equipment and supplies (excluding covered items for use outside the United States). These contracts were awarded to 192 unique entities, of which 105 were small entities. It is not known what percentage of these awards might involve personal protective equipment and other materials and components from the Democratic People's Republic of North Korea, The People's Republic of China, The Russian Federation, or the Islamic Republic of Iran.

There are no projected reporting or recordkeeping requirements. However, there may be minor compliance costs to validate with suppliers the origin of covered items, materials, and components.

In accordance with section 802, DoD is excepting acquisitions—

- Equal to or less than \$150,000;
- For covered items for use outside the United States; and
- If a covered item of satisfactory quality and quantity is not available in the required form from nations other than The Democratic People's Republic of North Korea, The People's Republic of China, The Russian Federation, or the Islamic Republic of Iran.

DoD was unable to identify any other alternatives that would reduce burden on small businesses and still meet the objectives of the statute.

VI. Paperwork Reduction Act

This 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 Parts 212, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 212, 225, and 252, which was published at 88 FR 6600 on January 31, 2023, is adopted as final with the following changes.

1. The authority citation for parts 212 and 225 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.301 [Amended]

2. Amend section 212.301 in paragraph (f)(ix)(MM) by removing “section 802 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81) (10 U.S.C. 4875)” and adding “10 U.S.C. 4875” in its place.

PART 225—FOREIGN ACQUISITION

3. Revise section 225.7023-2 to read as follows:

225.7023-2 Restriction.

Except as provided in 225.7023-3, do not acquire a covered item from a covered country in accordance with 10 U.S.C. 4875.

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