



**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 225 and 252**

**[Docket DARS-2024-0008]**

**RIN 0750-AL92**

**Defense Federal Acquisition Regulation Supplement: Trade Agreements Thresholds (DFARS Case 2023-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 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 [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This rule adjusts thresholds for application of the World Trade Organization (WTO) Government Procurement Agreement (GPA) and Free Trade Agreements (FTAs) 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 in the **Federal Register** (88 FR 85718), which are being implemented in this rule:

Trade Agreement	Supply Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	\$174,000	\$6,708,000
FTAs:		
Australia	\$102,280	\$6,708,000
Bahrain	\$174,000	\$13,296,489
Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	\$102,280	\$6,708,000
Chile	\$102,280	\$6,708,000
Colombia	\$102,280	\$6,708,000
Korea	\$100,000	\$6,708,000
Morocco	\$174,000	\$6,708,000
Panama	\$174,000	\$6,708,000
Peru	\$174,000	\$6,708,000

Singapore	\$102,280	\$6,708,000
United States-Mexico-Canada Agreement (USMCA)		
-Mexico	\$102,280	\$13,296,489

For several FTAs (i.e., Australia, Chile, Colombia, Singapore, CAFTA-DR, and Mexico), the thresholds for supply contracts have increased from \$92,319 to \$102,280. This increase causes these thresholds to exceed the Korea FTA threshold of \$100,000, where in the past they were below the Korea FTA threshold. As a result, the new threshold amounts no longer align with the language used in the prescriptions at DFARS 225.1101 for some of the alternate contract clauses at DFARS 252.225-7036, Buy American-Free Trade Agreements-Balance of Payments Program, as well as the text of the contract clause at DFARS 252.225-7017, Photovoltaic Devices, and the solicitation provision at DFARS 252.225-7018, Photovoltaic Devices-Certificate. Therefore, the corresponding text in these locations has been adjusted to accommodate the new thresholds.

**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, Publication of Proposed Regulations. Subsection (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 only adjusts the thresholds according to predetermined formulae to account 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 (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services**

This final rule amends the DFARS to revise thresholds for application of the WTO GPA and the FTA. However, this final rule does not impose any new requirements, or impact the applicability of solicitation provisions or contract clauses, for contracts at or below the SAT, for commercial products including COTS items, or for commercial services.

### **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, as amended.

#### **V. 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.

#### **VI. 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 (48 CFR 1.501-1), and 41 U.S.C. 1707 does not require publication for public comment.

#### **VII. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C chapter 35) applies to this final rule, because the final rule affects the

prescriptions for use of the information collection requirements in the solicitation provision at DFARS 252.225-7035, Buy American-Free Trade Agreements-Balance of Payments Program Certificate, and the information collection requirements in the solicitation provision at DFARS 252.225-7018, Photovoltaic Devices-Certificate. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) 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 D. Johnson,**

*Editor/Publisher, 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**

2. Amend section 225.1101-
- a. By revising and republishing paragraphs (6) introductory text, (10) (i) introductory text, and (10) (i) (A) and (B);
  - b. By revising paragraph (10) (i) (C);

c. By revising and republishing paragraphs (10) (i) (D), (E), and (F), (10) (i) (G) (1), and (10) (i) (H) (1);

d. By revising paragraph (10) (i) (I) (1); and

e. By revising and republishing paragraphs (10) (i) (J) (1), (10) (i) (K) (1), and (10) (i) (L) (1).

The revisions read as follows:

**225.1101 Acquisition of supplies.**

\* \* \* \* \*

(6) Except as provided in paragraph (6) (iv) of this section, use the basic or an alternate of the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if the World Trade Organization Government Procurement Agreement applies, i.e., the acquisition is of end products listed at 225.401-70, the value of the acquisition equals or exceeds \$174,000, and none of the exceptions at 25.401(a) applies.

\* \* \* \* \*

(10) (i) Except as provided in paragraph (10) (ii) of this section, use the basic or an alternate of the clause at 252.225-7036, Buy American-Free Trade Agreements-Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and

commercial services, for the items listed at 225.401-70, when the estimated value is less than \$174,000, unless an exception at FAR 25.401 or 225.401 applies.

(A) Use the basic clause in solicitations and contracts when the estimated value equals or exceeds \$100,000, but is less than \$174,000, except if the acquisition is of end products in support of operations in Afghanistan.

(B) Use the alternate I clause in solicitations and contracts when the estimated value is less than \$102,280, except if the acquisition is of end products in support of operations in Afghanistan.

(C) Use the alternate II clause in solicitations and contracts when the estimated value equals or exceeds \$100,000 but is less than \$174,000, and the acquisition is of end products in support of operations in Afghanistan.

(D) Use the alternate III clause in solicitations and contracts when the estimated value is less than \$102,280, and the acquisition is of end products in support of operations in Afghanistan.

(E) Use the alternate IV clause in solicitations and contracts when the estimated value equals or exceeds \$102,280 but is less than \$174,000, except if the acquisition is of end products in support of operations in Afghanistan.

(F) Use the alternate V clause in solicitations and contracts when the estimated value equals or exceeds \$102,280 but is less

than \$174,000 and the acquisition is of end products in support of operations in Afghanistan.

(G) \* \* \*

(1) The estimated value equals or exceeds \$100,000 but is less than \$174,000; and

\* \* \* \* \*

(H) \* \* \*

(1) The estimated value is less than \$102,280; and

\* \* \* \* \*

(I) \* \* \*

(1) The estimated value equals or exceeds \$100,000, but is less than \$174,000;

\* \* \* \* \*

(J) \* \* \*

(1) The estimated value is less than \$102,280;

\* \* \* \* \*

(K) \* \* \*

(1) The estimated value equals or exceeds \$102,280 but is less than \$174,000; and

\* \* \* \* \*

(L) \* \* \*

(1) The estimated value equals or exceeds \$102,280 but is less than \$174,000;

\* \* \* \* \*

**225.7017-3 [Amended]**

3. Amend section 225.7017-3-

a. In paragraph (b) by removing "\$183,000" and "(see FAR 25.103(c))" and adding "\$174,000" and "(see FAR 25.103(c))" in their places, respectively;

b. In paragraph (c) (1) by removing "valued at \$25,000 or more"; and

c. In paragraph (c) (2) by removing "\$183,000" and adding "\$174,000" in its place.

4. Amend section 225.7503—

a. By revising and republishing paragraphs (a) introductory text, (b) introductory text, (b) (1) through (4), and (b) (5) (i);

b. By revising paragraph (b) (6) (i); and

c. By revising and republishing paragraphs (b) (7) (i) and (b) (8) (i).

The revisions read as follows:

**225.7503 Contract clauses.**

\* \* \* \* \*

(a) Use the basic or an alternate of the clause at 252.225-7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial products or commercial components, with an estimated value greater than the simplified acquisition threshold but less than \$6,708,000.

\* \* \* \* \*

(b) Use the basic or an alternate of the clause at 252.225-7045, Balance of Payments Program—Construction Material Under

Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with an estimated value of \$6,708,000 or more, including acquisitions of commercial products or commercial components.

(1) Use the basic clause in solicitations and contracts with an estimated value of \$13,296,489 or more, unless the acquisition is in support of operations in Afghanistan.

(2) Use the alternate I clause in solicitations and contracts with an estimated value of \$6,708,000 or more, but less than \$13,296,489 unless the acquisition is in support of operations in Afghanistan.

(3) Use the alternate II clause in solicitations and contracts with an estimated value of \$13,296,489 or more and is in support of operations in Afghanistan.

(4) Use the alternate III clause in solicitations and contracts with an estimated value of \$6,708,000 or more, but less than \$13,296,489, and is in support of operations in Afghanistan.

(5) \* \* \*

(i) The estimated value is \$13,296,489 or more; and

\* \* \* \* \*

(6) \* \* \*

(i) The estimated value is \$6,708,000 or more, but less than \$13,296,489; and

\* \* \* \* \*

(7) \* \* \*

(i) The estimated value is \$13,296,489 or more;

\* \* \* \* \*

(8) \* \* \*

(i) The estimated value is \$6,708,000 or more but less than \$13,296,489;

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.225-7017 [Amended]**

5. Amend section 252.225-7017—

a. By removing the clause date “(NOV 2023)” and adding “(MAR 2024)” in its place;

b. In paragraph (c) (1) by removing “\$92,319” and adding “\$100,000” in its place;

c. In paragraph (c) (2) by removing “\$92,319 or more but less than \$100,000” and adding “\$100,000 or more but less than \$102,280” in its place; and

d. In paragraphs (c) (3) and (4) by removing “\$183,000” and adding “\$174,000” in its place.

6. Amend section 252.225-7018—

a. By removing the provision date “(NOV 2023)” and adding “(MAR 2024)” in its place; and

b. Revising and republishing paragraphs (b) through (d).

The revisions read as follows:

**252.225-7018 Photovoltaic Devices—Certificate.**

\* \* \* \* \*

(b) *Restrictions.* The following restrictions apply, depending on the estimated aggregate value of photovoltaic devices to be utilized under a resultant contract:

(1) If more than the micro-purchase threshold but less than \$174,000, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (d) (2) (ii), (d) (3) (ii), (d) (4) (ii), or (d) (5) (ii) of this provision, unless the Offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If \$174,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are U.S.-made, qualifying country, or designated country photovoltaic devices.

(c) *Country in which a designated country photovoltaic device was wholly manufactured or was substantially transformed.* If the estimated value of the photovoltaic devices to be utilized under a resultant contract exceeds \$102,280, the Offeror's certification that such photovoltaic device (e.g., solar panel) is a designated country photovoltaic device shall be consistent with country of origin determinations by the U.S. Customs and Border Protection with regard to importation of the same or similar photovoltaic devices into the United States. If the Offeror is uncertain as to what the country of origin would be determined to be by the U.S. Customs and Border Protection, the

Offeror shall request a determination from U.S. Customs and Border Protection. (See <https://www.cbp.gov/trade/rulings>.)

(d) *Certification and identification of country of origin.*

*[The Offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:]*

(1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value that does not exceed the micro-purchase threshold.

(2) If more than the micro-purchase threshold but less than \$100,000—

\_\_\_ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

\_\_\_ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device *[Offeror to specify country of origin\_\_\_]*; or

\_\_\_ (iii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of \_\_\_\_\_. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e., that the price of the foreign photovoltaic device*

*plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(3) If less than \$100,000—

\_\_\_ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

\_\_\_ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device [*Offeror to specify country of origin*\_\_\_]; or

\_\_\_ (iii) The foreign photovoltaic devices to be utilized in performance of the contract are the product of\_\_\_. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.*]

(4) If \$100,000 or more but less than \$102,280—

\_\_\_ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

\_\_\_ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device)

or a qualifying country photovoltaic device [*Offeror to specify country of origin\_\_\_\_\_*]; or

\_\_ (iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d) (4) (ii) of this provision) are the product of \_\_\_\_\_. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.*]

(5) If \$100,000 or more but less than \$174,000—

\_\_ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

\_\_ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device [*Offeror to specify country of origin\_\_\_\_\_*]; or

\_\_ (iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d) (5) (ii) of this provision) are the product of \_\_\_\_\_. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in*

*comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(6) If \$174,000 or more, the Offeror certifies that each photovoltaic device to be used in performance of the contract is-

\_\_ (i) A U.S.-made photovoltaic device; or

\_\_ (ii) A designated country photovoltaic device or a qualifying country photovoltaic device. *[Offeror to specify country of origin\_\_\_\_\_.]*

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