

information technology contracts from the regulatory time limits being supplemented by this rule.

3. *Comment: Period of performance for certain performance-based contracts.*

One respondent stated that some performance-based contracts require periods of performance of 15 to 20 years to obtain the desired end results and questioned how to award these contracts given the limits imposed by the rule.

*DoD Response:* The rule permits agencies to authorize longer performance periods when deemed necessary for exceptional circumstances.

4. *Comment: Administrative error.*

One respondent requested clarification of the DoD Response to Comment 1 in the preamble to the interim rule published at 69 FR 74992 on December 15, 2004. The text contained an erroneous reference to DFARS 217.204(e)(iii) regarding the limit on period of performance for task and delivery orders.

*DoD Response:* Concur that the reference was in error. The correct reference is DFARS 217.204(e)(iv).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

## B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. The analysis is summarized below. A copy of the analysis may be obtained from the point of contact specified herein.

This rule finalizes an interim DFARS rule published on December 15, 2004. The rule implements Section 843 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) and Section 813 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Section 843 of Public Law 108-136 limited the period of a task or delivery order contract awarded under 10 U.S.C. 2304a to not more than 5 years. Section 813 of Public Law 108-375 revised the limitation to not more than 10 years, unless the head of the agency determines in writing that exceptional circumstances require a longer contract period. DoD received no comments on the initial regulatory flexibility analysis. As a result of comments received on the interim rule, the final rule clarifies the types of contracts that are subject to the rule and clarifies that the Congressional reporting requirement, applicable to contracts with ordering periods exceeding 10 years, expires at the end of fiscal year 2009. The rule applies to DoD task or

delivery order contracts awarded under the authority of 10 U.S.C. 2304a. It may affect businesses interested in receiving such contracts. The impact on small entities is unknown at this time.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 216 and 217

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Accordingly, the interim rule amending 48 CFR parts 216 and 217, which was published at 69 FR 13478 on March 23, 2004, and which was amended by the interim rule published at 69 FR 74992 on December 15, 2004, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 216 and 217 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.204 is revised to read as follows:

#### 217.204 Contracts.

(e)(i) Notwithstanding FAR 17.204(e), the ordering period of a task order or delivery order contract (including a contract for information technology) awarded by DoD pursuant to 10 U.S.C. 2304a—

(A) May be for any period up to 5 years;

(B) May be subsequently extended for one or more successive periods in accordance with an option provided in the contract or a modification of the contract; and

(C) Shall not exceed 10 years unless the head of the agency determines in writing that exceptional circumstances require a longer ordering period.

(ii) DoD must submit a report to Congress, annually through fiscal year 2009, when an ordering period is extended beyond 10 years in accordance with paragraph (e)(i)(C) of this section. Follow the procedures at PGI 217.204(e) for reporting requirements.

(iii) Paragraph (e)(i) of this section does not apply to the following:

(A) Contracts, including task or delivery order contracts, awarded under other statutory authority.

(B) Advisory and assistance service task order contracts (authorized by 10 U.S.C. 2304b that are limited by statute to 5 years, with the authority to extend an additional 6 months (see FAR 16.505(c)).

(C) Definite-quantity contracts.

(D) GSA schedule contracts.

(E) Multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard.

(iv) Obtain approval from the senior procurement executive before issuing an order against a task or delivery order contract subject to paragraph (e)(i) of this section, if performance under the order is expected to extend more than 1 year beyond the 10-year limit or extended limit described in paragraph (e)(i)(C) of this section (see FAR 37.106 for funding and term of service contracts).

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 225 and 252

[DFARS Case 2004-D013]

#### Defense Federal Acquisition Regulation Supplement; Free Trade Agreements—Australia and Morocco

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement new Free Trade Agreements with Australia and Morocco. The Free Trade Agreements were scheduled to become effective on or after January 1, 2005. However, the Morocco Free Trade Agreement has not yet entered into force and is therefore removed from this final rule.

**DATES:** *Effective Date:* December 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2004-D013.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 70 FR 2361 on January 13, 2005, to implement new Free Trade Agreements

with Australia and Morocco, as approved by Congress in the United States-Australia Free Trade Agreement Implementation Act (Public Law 108-286) and the United States-Morocco Free Trade Agreement Implementation Act (Public Law 108-302). The Free Trade Agreements were scheduled to become effective on or after January 1, 2005. However, the United States Trade Representative has informed DoD that the Morocco Free Trade Agreement has not yet entered into force. Therefore, implementation of the Morocco Free Trade Agreement is excluded from this final rule. In addition, for consistency with the Federal Acquisition Regulation and other changes made by the interim rule, this final rule amends the definition of "eligible product" at 225.003 to include foreign construction material.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401-70; and acquisitions that are set aside for small business concerns are exempt from application of the trade agreements.

#### C. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225-7020 and 252.225-7035, currently approved under Office of Management and Budget Control Number 0704-0229. The impact, however, is negligible.

#### List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

##### Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 70 FR 2361 on January 13, 2005, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 225—FOREIGN ACQUISITION

■ 2. Section 225.003 is amended as follows:

■ a. In paragraph (5)(i)(B), by removing "or";

■ b. By redesignating paragraph (5)(ii) as paragraph (5)(iii); and

■ c. By adding a new paragraph (5)(ii) to read as follows:

##### 225.003 Definitions.

\* \* \* \* \*

(5) \* \* \*

(ii) A foreign construction material that is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition; or

\* \* \* \* \*

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

##### 252.212-7001 [Amended]

■ 3. Section 252.212-7001 is amended as follows:

■ a. By revising the clause date to read "(DEC 2005)"; and

■ b. In paragraph (b), in entry "252.225-7021", by removing "(JUN 2005)" and adding in its place "(DEC 2005)".

##### 252.225-7021 [Amended]

■ 4. Section 252.225-7021 is amended as follows:

■ a. By revising the clause date to read "(DEC 2005)"; and

■ b. In paragraph (a)(3)(ii), by removing "Morocco,".

■ 5. Section 252.225-7045 is amended as follows:

■ a. By revising the clause date to read "(DEC 2005)";

■ b. In paragraph (a), in the definition of "Designated country", in paragraph (2), by removing "Morocco,"; and

■ c. By revising Alternate I to read as follows:

##### 252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.

\* \* \* \* \*

Alternate I (DEC 2005). As prescribed in 225.7503(b), delete the definitions of "designated country" and "designated country construction material" from the definitions in paragraph (a) of the basic clause, add the following definition of "Australian or Chilean construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

*Australian or Chilean construction material* means a construction material that—

(1) Is wholly the growth, product, or manufacture of Australia or Chile; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Australia or Chile into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for WTO GPA country, Australian or Chilean, least developed country, or Caribbean Basin country construction material.

(c) The Contractor shall use only domestic, WTO GPA country, Australian or Chilean, least developed country, or Caribbean Basin country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

*[Contracting Officer to list applicable excepted materials or indicate "none"]*

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#### DEPARTMENT OF DEFENSE

##### 48 CFR Parts 225 and 252

[DFARS Case 2003-D008]

##### Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the acquisition of supplies and services from foreign sources. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** *Effective Date:* December 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System,