

■ 2. Section 237.102-70 is amended by revising paragraph (d)(3) to read as follows:

237.102-70 Prohibition on contracting for firefighting or security-guard functions.

* * * * *

(d) * * *

(3) Contract performance will not extend beyond September 30, 2007.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750-AF43

Defense Federal Acquisition Regulation Supplement; Free Trade Agreement—El Salvador, Honduras, and Nicaragua (DFARS Case 2006-D019)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the Dominican Republic-Central America-United States Free Trade Agreement with respect to El Salvador, Honduras, and Nicaragua. The Free Trade Agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials and specifies procurement procedures designed to ensure fairness.

DATES: *Effective date:* June 16, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 15, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006-D019, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2006-D019 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition

Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS provisions and clauses to implement the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) with respect to El Salvador, Honduras, and Nicaragua. Congress approved the CAFTA-DR in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109-53). Other signatory countries to the CAFTA-DR are Costa Rica, the Dominican Republic, and Guatemala. The DFARS will be further amended when the CAFTA-DR takes effect for these countries. The CAFTA-DR waives the applicability of the Buy American Act for some foreign supplies and construction materials and specifies procurement procedures designed to ensure fairness.

For supply and service contracts, the CAFTA-DR has the same dollar threshold as the other Free Trade Agreements (\$64,786), except that the Morocco Free Trade Agreement has a higher threshold that is equal to the threshold for the World Trade Organization Government Procurement Agreement (\$193,000); and the North American Free Trade Agreement (NAFTA) has a lower threshold with respect to supply contracts involving Canada (\$25,000). For construction contracts, the CAFTA-DR and the Morocco Free Trade Agreement have the same threshold as the Australia Free Trade Agreement, the Chile Free Trade Agreement, the Singapore Free Trade Agreement, and the World Trade Organization Government Procurement Agreement (\$7,407,000), which is lower than the NAFTA threshold of \$8,422,165 for construction contracts. Therefore, the DFARS provision and clause that implement the Free Trade Agreements below the World Trade Organization Government Procurement Agreement threshold (DFARS 252.225-7035 and 252.225-7036) apply to end products from all Free Trade Agreement countries except Morocco. The construction contract clause that implements trade agreements (DFARS 252.225-7045) applies to all designated

country construction material except Mexican construction material, because Canada, the other NAFTA country, is a member of the World Trade Organization Government Procurement Agreement.

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 does not expect this rule to 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.* Although the rule opens up DoD procurement to the products of El Salvador, Honduras, and Nicaragua, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401-70, and procurements that are set aside for small businesses are exempt from application of the trade agreements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006-D019.

C. Paperwork Reduction Act

This interim 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.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements the Dominican Republic-Central America-United States Free Trade Agreement with respect to El Salvador, Honduras, and Nicaragua, as approved by Congress in Public Law 109-53. The Free Trade Agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials from El Salvador, Honduras, and Nicaragua, and specifies procurement procedures designed to ensure fairness. The Free Trade

Agreement became effective for El Salvador on March 1, 2006, and for Honduras and Nicaragua on April 1, 2006. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, 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. 421 and 48 CFR Chapter 1.

252.212-7001 [Amended]

2. Section 252.212-7001 is amended as follows:

- a. By revising the clause date to read "(JUN 2006)";
b. In paragraph (b), in entry "252.225-7021", by removing "(FEB 2006)" and adding in its place "(JUN 2006)"; and
c. In paragraph (b), in entry "252.225-7036", by removing "(JUN 2005)" and adding in its place "(JUN 2006)".

3. Section 252.225-7013 is amended by revising the clause date and paragraph (a)(2) to read as follows:

252.225-7013 Duty-Free Entry.

* * * * *

Duty-Free Entry (JUN 2006)

- (a) * * *
(2) Eligible product means—
(i) Designated country end product as defined in the Trade Agreements clause of this contract;
(ii) Free Trade Agreement country end product, other than a Moroccan end product, as defined in the Buy American Act-Free Trade Agreements-Balance of Payments Program clause of this contract; or
(iii) Canadian end product as defined in Alternate I of the Buy American Act-Free Trade Agreements-Balance of Payments Program clause of this contract.

* * * * *

4. Section 252.225-7021 is amended by revising the clause date and paragraphs (a)(3)(ii) and (iv) to read as follows:

252.225-7021 Trade agreements.

* * * * *

Trade Agreements (JUN 2006)

- (a) * * *
(3) * * *

(ii) A Free Trade Agreement country (Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

* * * * *

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, Grenada, Guatemala, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

* * * * *

5. Section 252.225-7035 is amended by revising the clause date and paragraphs (a), (b)(2), (c)(2)(ii), and Alternate I to read as follows:

252.225-7035 Buy American Act-Free Trade Agreements-Balance of Payments Program Certificate.

* * * * *

Buy American Act-Free Trade Agreements-Balance of Payments Program Certificate (JUN 2006)

(a) Definitions. Domestic end product, Free Trade Agreement country, Free Trade Agreement country end product, foreign end product, Moroccan end product, qualifying country end product, and United States have the meanings given in the Buy American Act-Free Trade Agreements-Balance of Payments Program clause of this solicitation.

- (b) * * *

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Moroccan end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

- (c) * * *

- (2) * * *

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Moroccan end products:

(Line Item Number) (Country of Origin)

* * * * *

Alternate I (JUN 2006)

As prescribed in 225.1101(9), substitute the phrase "Canadian end product" for the phrases "Free Trade Agreement country", "Free Trade Agreement country end product", and "Moroccan end product" in paragraph

(a) of the basic provision; and substitute the phrase "Canadian end products" for the phrase "Free Trade Agreement country end products other than Moroccan end products" in paragraphs (b)(2) and (c)(2)(ii) of the basic provision.

6. Section 252.225-7036 is amended as follows:

- a. By revising the clause date;
b. By removing paragraph (a)(4);
c. By redesignating paragraph (a)(5) as paragraph (a)(4), and paragraphs (a)(6) through (9) as paragraphs (a)(8) through (11) respectively;
d. By adding new paragraphs (a)(5) through (7); and
e. By revising paragraph (c) to read as follows:

252.225-7036 Buy American Act-Free Trade Agreements-Balance of Payments Program.

* * * * *

Buy American Act-Free Trade Agreements-Balance of Payments Program (JUN 2006)

- (a) * * *

(5) Free Trade Agreement country means Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore;

(6) Free Trade Agreement country end product means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) Moroccan end product means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but

for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

* * * * *

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Moroccan end products, or other foreign end products in the Buy American Act-Free Trade Agreements-Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Moroccan end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Moroccan end product, or, at the Contractor's option, a domestic end product.

* * * * *

7. Section 252.225-7045 is amended by revising the clause date, the definition of "Designated country" in paragraph (a), and Alternate I to read as follows:

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

* * * * *

Balance of Payments Program—Construction Material Under Trade Agreements (JUN 2006)

(a) * * *

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia,

Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, Grenada, Guatemala, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

* * * * *

Alternate I (JUN 2006). As prescribed in 225.7503(b), add the following definition of "*Mexican 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:

Mexican construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Mexico; 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 Mexico 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 designated country construction material other than Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Mexican 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 STATE

48 CFR Parts 601, 611, 619, 622, 628, and 652

[Public Notice 5444]

RIN 1400-AB90

Rule Title: Department of State Acquisition Regulation

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule issued on December 22, 2004, with several revisions. It revises the DOSAR to formalize Department policy regarding the application of the Small Business Act to contracts awarded by domestic contracting activities where contract performance takes place overseas; and, revises the coverage regarding Defense Base Act insurance. The final rule also contains several miscellaneous amendments and corrections not published on December 22, 2004, as outlined below. The Department received public comments from three sources on the proposed rule, which are discussed below.

DATES: *Effective Date:* This rule is effective June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522-0602; e-mail address: ginesgg@state.gov.

SUPPLEMENTARY INFORMATION: The Department published a proposed rule, Public Notice 4938 at 69 FR 76660, December 22, 2004, with a request for comments, amending Parts 619, 625, 628, and 652 of Title 48 of the Code of Federal Regulations. The rule made three changes to the DOSAR: (1) Formalized policy regarding the application of the Small Business Act to contracts awarded by domestic contracting activities where contract performance takes place overseas; (2) added language to deal with U.S. Government support to contractors performing overseas; and (3) revised the coverage regarding Defense Base Act insurance. The proposed rule was discussed in detail in Public Notice 4938. The Department is now promulgating a final rule with changes from the proposed rule.

In particular, the Department is not finalizing that part of the proposed rule dealing with U.S. Government support to contractors performing overseas. The Department of Defense published a final rule on May 5, 2005 (70 FR 23790). That final rule contained a clause for use in