

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 37794 on June 9, 2023, is adopted as final without change.

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 225**

[Docket DARS–2023–0006]

RIN 0750–AL39

Defense Federal Acquisition Regulation Supplement: Restrictions on Overhaul and Repair of Naval Vessels in Foreign Shipyards (DFARS Case 2021–D021)

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 implement a section of the National Defense Authorization Act for Fiscal Year 2021 that restricts overhaul and repair of a naval vessel in a shipyard outside the United States or Guam.

DATES: Effective October 30, 2023.

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

SUPPLEMENTARY INFORMATION:**I. Background**

DoD is issuing a final rule amending the DFARS to implement section 1025 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283), which amends 10 U.S.C. 8680(a) to restrict the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam. The restriction does not apply to voyage repairs or to repairs required for damage sustained due to hostile actions or interventions. In addition, the restriction does not apply to a naval vessel classified as a littoral combat ship operating on deployment for corrective

and preventive maintenance or repair and facilities maintenance. The rule also establishes the criteria under which foreign workers or foreign contractors may be used to perform corrective and preventive maintenance or repair or facilities maintenance on a naval vessel.

DoD published a proposed rule in the **Federal Register** at 88 FR 17360 on March 22, 2023, to revise the DFARS to implement section 1025 of the NDAA for FY 2021. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment is provided, as follows:

A. Summary of Significant Changes

No changes are made to the final rule as a result of public comments.

B. Analysis of Public Comment

Comment: A respondent provided comments with overall support of the rule and stated it would save money and reduce the need for supplies and preventative maintenance on ships in foreign shipyards.

Response: DoD acknowledges the respondent's support for the rule.

C. Other Changes

Minor editorial changes are made in paragraph (b) of DFARS 225.7013–2 to comply with drafting conventions.

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

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or prescriptions for their use.

IV. Expected Impact of the Rule

Currently, DFARS 225.7013 includes the restrictions on the construction or repair of vessels in foreign shipyards. This rule adds the exception for repairs necessary to correct damage sustained due to hostile actions or interventions and for corrective and preventive maintenance or repair and facilities maintenance on naval vessels classified as littoral combat ships operating on deployment. Under these exceptions, the repairs or maintenance described above may be performed in a shipyard outside the United States or Guam in accordance with 10 U.S.C. 8680(a). The rule also specifies the authorized use of

foreign workers under certain conditions when a determination is made by the Secretary of the Navy, who cannot further delegate the authority to make such a determination.

V. 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.

VI. 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.

VII. 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:

DoD is issuing a final rule amending the DFARS to implement section 1025 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 1025 amends 10 U.S.C. 8680(a) to restrict the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam, unless the repairs are: (1) voyage repairs or repairs necessary to correct damage sustained due to hostile actions or interventions; or (2) to a naval vessel classified as a littoral combat ship operating on deployment for corrective and preventive maintenance or repair and facilities maintenance. The final rule also establishes that: (1) foreign workers may not be used to perform corrective and preventive maintenance or repair on a naval vessel unless the

Secretary of the Navy (without further delegation) makes a determination; and (2) foreign contractors may not be used to perform facilities maintenance unless approved by the Secretary of the Navy. The objective of the rule is to implement the restrictions of section 1025 of the NDAA for FY 2021 on the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam, with exceptions as described in this paragraph.

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

DoD reviewed data from the Federal Procurement Data System for fiscal years 2020, 2021, and 2022 for contracts for the repair or overhaul of naval vessels outside the United States or Guam that exceeded the simplified acquisition threshold. DoD awarded a total of 383 contracts to an average of 76 unique small entities.

It is expected that this rule will continue to provide small businesses the opportunity to participate in acquisitions for the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam, since naval vessel overhaul restrictions currently exist, and this rule provides exceptions that allow for U.S. contractor personnel to perform certain repairs and maintenance in accordance with 10 U.S.C. 8680(a).

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known significant alternative approaches to the rule that would meet the requirements of the statute.

VIII. 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 Part 225

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

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

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

225.7013 [Amended]

- 2. Amend section 225.7013 by removing the introductory text and paragraphs (a) and (b).
- 3. Add sections 225.7013–0, 225.7013–1, and 225.7013–2 to read as follows:

225.7013–0 Scope.

This section implements 10 U.S.C. 8679 and 10 U.S.C. 8680.

225.7013–1 Definitions.

As used in this section—
Corrective and preventive maintenance or repair means—

- (1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and
- (2) Scheduled maintenance or repair actions to prevent or discover functional failures.

Facilities maintenance means the effort required to—

- (1) Provide housekeeping services throughout the ship;
- (2) Perform coating maintenance and repair to exterior and interior surfaces due to normal environmental conditions; and
- (3) Clean mechanical spaces, mission zones, and topside spaces.

225.7013–2 Restrictions.

(a) *Contract award* (10 U.S.C. 8679). Do not award a contract to construct in a foreign shipyard—

- (1) A vessel for any of the armed forces; or
- (2) A major component of the hull or superstructure of a vessel for any of the armed forces.

(b) *Overhaul, repair, or maintenance* (10 U.S.C. 8680). (1) Do not overhaul, repair, or maintain, in a shipyard outside the United States or Guam, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States or Guam.

- (2) This restriction on overhaul, repair, or maintenance does not apply to—
 - (i) Voyage repairs; or
 - (ii) Repairs necessary to correct damage sustained due to hostile actions or interventions.

(3) For a naval vessel classified as a littoral combat ship and operating on deployment—

- (i) Corrective and preventive maintenance or repair, whether intermediate or depot level, and facilities maintenance may be performed if the work is performed by U.S. Government personnel or U.S. contractor personnel—

(A) In a foreign shipyard;

(B) At a facility outside of a foreign shipyard; or

(C) At any other facility convenient to the vessel;

(ii) Foreign workers may be used to perform corrective and preventive maintenance or repair, only if the Secretary of the Navy, without power of delegation, determines that travel by U.S. Government or contractor personnel to perform the maintenance or repair is not advisable for health or safety reasons; and

(iii) Foreign contractors may perform facilities maintenance only as approved by the Secretary of Navy.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2023–0038]

RIN 0750–AL98

Defense Federal Acquisition Regulation Supplement: New Designated Country—North Macedonia (DFARS Case 2024–D001)

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 add North Macedonia as a new designated country under the World Trade Organization Government Procurement Agreement.

DATES: Effective October 30, 2023.

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

SUPPLEMENTARY INFORMATION:

I. Background

On June 7, 2023, the World Trade Organization (WTO) Committee on Government Procurement approved the accession of North Macedonia to the WTO Government Procurement Agreement (GPA). This final rule amends the DFARS to add North Macedonia to the list of World Trade Organization (WTO) Government Procurement Agreement (GPA) countries wherever it appears in the DFARS, as part of the definition of “designated country”.

The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides the authority for the President to waive the Buy