

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 203, 204, 212, and 215**

[Docket DARS–2023–0043; Req No. DARS–2024–00011–FR]

RIN 0750–AK33

**Defense Federal Acquisition Regulation Supplement: Inapplicability of Additional Defense-Unique Laws and Certain Non-Statutory DFARS Clauses to Commercial Item Contracts (DFARS Case 2018–D074)**

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Acts for Fiscal Years 2018 and 2019 regarding applicability of certain solicitation provisions and contract clauses to contracts and subcontracts for commercial products, commercial services, and commercially available off-the-shelf items.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 16, 2024, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2018–D074, using either of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for “DFARS Case 2018–D074”. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2018–D074” on any attached documents.

- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2018–D074 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanette Snyder, telephone 703–508–7524.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to amend the DFARS to implement paragraphs (b) and (c) of section 849 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 849 paragraph (b) requires that DoD review the DFARS and propose revisions to eliminate certain contract clause requirements applicable to Federal Acquisition Regulation (FAR) part 12 commercial product and commercial service acquisitions, except for regulations required by law or Executive order, unless the Secretary of Defense determines that there is a specific reason not to eliminate the regulation. Section 849 paragraph (c) requires that DoD review the DFARS and propose revisions to eliminate certain contract clause requirements applicable to commercially available off-the-shelf (COTS) item subcontracts, except for regulations required by law or Executive order, unless the Secretary of Defense determines that there is a specific reason not to eliminate the regulation.

DoD also proposes to amend the DFARS to implement paragraph (a) of section 837 of the NDAA for FY 2019 (Pub. L. 115–232). Section 837 paragraph (a) revises 10 U.S.C. 2375(b)(2), redesignated as 10 U.S.C. 3452(b)(2), by deleting the date “January 1, 2015” and adding the date “October 13, 1994” (the date of the Federal Acquisition Streamlining Act (FASA) of 1994). See companion DFARS case 2017–D010 proposed rule, published in the **Federal Register** at 83 FR 30646 on June 29, 2018, which examined commercial product and commercial service applicability for DoD-unique statutes and associated contract clauses issued on or after January 1, 2015. This proposed rule under DFARS Case 2018–D074 implements the section 837(a) change to 10 U.S.C. 3452(b)(2) to extend the required review of applicability of provisions of law or contract clauses to prime contracts for commercial products and commercial services enacted after October 13, 1994. Paragraphs (c)(2) and (d)(2) of 10 U.S.C. 3452 contain similar requirements for subcontracts for commercial products and commercial services, and contracts for COTS items; however, the date of October 13, 1994, is not repeated in these sections. Following the precedent set in DFARS Case 2017–D010, for this proposed rule DoD has interpreted the date of October 13, 1994, as equally applicable to all three paragraphs, (b)(2), (c)(2), and (d)(2), since all three paragraphs are inter-related.

It should be noted that a clause that is inapplicable to a contract for commercial products is also inapplicable to a contract for COTS items, which are commercial products, but a clause that is applicable to a contract for commercial products may be inapplicable to a contract for COTS items. The reason for this distinction is because a COTS item, while a subset of commercial products, is unique in that it is offered to the Government without modification and in the same form in which it is sold in the commercial marketplace.

**II. Discussion and Analysis**

DoD identified the DFARS solicitation provisions and contract clauses published as interim or final rules after October 13, 1994, excluding those reviewed under DFARS case 2017–D010, and determined whether the provisions and clauses were based on statute, Executive order, or policy. New interim or final rules published after the publication of DFARS case 2017–D010 on June 29, 2018, were also identified and evaluated under this proposed rule. Provisions and clauses listed at DFARS section 212.301 as applicable to the acquisition of commercial products and commercial services were included in the review.

The proposed rule adds to the list of inapplicable provisions and clauses at DFARS 212.370, Inapplicability of Certain Provisions and Clauses to Contracts and Subcontracts for the Acquisition of Commercial Products, Commercial Services, and Commercially Available Off-the-shelf Items, two provisions and one clause that are removed from paragraph (f) at DFARS 212.301, Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services. These provisions and clause will no longer be applicable to contracts and subcontracts for the acquisition of commercial products, commercial services, and COTS items:

- DFARS 252.203–7003, Agency Office of the Inspector General.
- DFARS 252.203–7005, Representation Relating to Compensation of Former DoD Officials.
- DFARS 252.215–7007, Notice of Intent to Resolicit.

The proposed rule updates the text at DFARS 212.371, Inapplicability of Certain Provisions and Clauses to Contracts for the Acquisition of Commercially Available Off-the-shelf Items, to conform to the change at 10 U.S.C. 3452(b)(2) by replacing the date of January 1, 2015, with October 13, 1994. In addition, two provisions and two clauses, listed at DFARS 212.301,

are included on the list at DFARS 212.371. This means that although these provisions and clauses are applicable to contracts for the acquisition of commercial products and commercial services, they are not applicable to contracts for the acquisition of COTS items:

- 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls.
- 252.204–7019, Notice of NIST SP 800–171 DoD Assessment Requirements.
- 252.204–7020, NIST SP 800–171 DoD Assessment Requirements.
- 252.204–7021, Cybersecurity Maturity Model Certification Requirements.

The proposed rule revises the following prescriptions for two provisions and one clause to remove the requirement to include the provisions and clause in solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services:

- The prescription at DFARS 203.171–4(b) for the provision at DFARS 252.203–7005, Representation Relating to Compensation of Former DoD Officials.
- The prescription at DFARS 203.1004(a) for the clause at DFARS 252.203–7003, Agency Office of the Inspector General.
- The prescription at DFARS 215.371–6, for the provision at DFARS 252.215–7007, Notice of Intent to Resolicit.

DFARS 204.7403(b) is amended to add the phrase “that involve litigation support services” to clarify the application of the clause at 252.204–7015, Notice of Authorized Disclosure of Information for Litigation Support. At DFARS 212.301, the list of provisions and clauses under paragraph (f) is amended to add statutory references or expand on the existing references cited for several clauses and provisions.

Section 212.504, Applicability of Certain Laws to Subcontracts for the Acquisition of Commercial Products and Commercial Services, is amended to remove the reference to 10 U.S.C. 4871, Reporting Requirement Regarding Dealings with Terrorist Countries, which is obsolete. The reporting requirement expired on September 30, 1996.

For this proposed rule, DoD evaluated solicitation provisions or contract clauses in relation to 10 U.S.C. 3452 (e)(1), (e)(2), and (e)(3), *i.e.*, those that implement a statute that provides for criminal or civil penalties, implement 10 U.S.C. 4862 or 4863, or implement statutes that specifically referred to 10

U.S.C. 3452 and provided for applicability to contracts for commercial products and commercial services. DoD also identified pre-FASA provisions and clauses. A list of those provisions and clauses follows this paragraph. No provisions or clauses were identified as implementing statutes that specifically referred to 10 U.S.C. 3452.

The following provisions and clauses implement statutes that provide for criminal or civil penalties:

- 252.203–7000, Requirements Relating to Compensation of Former DoD Officials.
- 252.203–7002, Requirement to Inform Employees of Whistleblower Rights.
- 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System. (Applies to subcontracts.)
- 252.246–7008, Sources of Electronic Parts.
- 252.247–7027, Riding Gang Member Requirements.

The following provisions and clauses implement 10 U.S.C. 4862 or 4863:

- 252.225–7006, Acquisition of the American Flag.
- 252.225–7008, Restriction on Acquisition of Specialty Metals.
- 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.
- 252.225–7010, Commercial Derivative Military Article-Specialty Metals Compliance Certificate.
- 252.225–7012, Preference for Certain Domestic Commodities.
- 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools.
- 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police.

The following clauses existed prior to FASA (*i.e.*, before October 14, 1994).

- 252.205–7000, Provision of Information to Cooperative Agreement Holders.
- 252.219–7003, Small Business Subcontracting Plan (DoD Contracts).
- 252.225–7001, Buy American and Balance of Payments Program.
- 252.247–7023, Transportation of Supplies by Sea.
- 252.247–7025, Reflagging or Repair Work.

### 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 proposed rule does not create any new solicitation provisions or contract clauses. However, the proposed

rule proposes to change to the applicability of the following provisions and clause by making them inapplicable to contracts and subcontracts for the acquisition of commercial products, commercial services, and COTS items: (1) 252.203–7003, Agency Office of the Inspector General; (2) 252.203–7005, Representation Relating to Compensation of Former DoD Officials; and (3) 252.215–7007, Notice of Intent to Resolicit.

### IV. Expected Impact of the Proposed Rule

This proposed rule, when finalized, could impact any large or small business that is awarded a commercial contract by DoD. The proposed rule does not add any new solicitation provisions or contract clauses. Rather, there may be a reduction in burden on contractors by making two solicitation provisions and one contract clause no longer applicable to solicitations and contracts for commercial products, commercial services, and COTS items.

### 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. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, 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.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 and the NDAA for FY 2019 regarding applicability of certain solicitation provisions and contract clauses to contracts and subcontracts for commercial products, commercial

services, and commercially available off-the-shelf (COTS) items.

The objective of this proposed rule is to implement paragraphs (b) and (c) of section 849 of the NDAA for FY 2018 (Pub. L. 115–91). Section 849 paragraph (b) requires an amendment to the DFARS to eliminate certain contract clause requirements applicable to FAR part 12 commercial product and commercial service acquisitions, except for regulations required by law or Executive order, unless the Secretary of Defense determines that there is a specific reason not to eliminate the regulation. Section 849 paragraph (c) requires an amendment to the DFARS to eliminate certain contract clause requirements applicable to COTS item subcontracts, except for regulations required by law or Executive order, unless the Secretary of Defense determines that there is a specific reason not to eliminate the regulation.

This proposed rule also includes revisions to implement paragraph (a) of section 837 of the NDAA for FY 2019 (Pub. L. 115–232). Section 837 paragraph (a) revises 10 U.S.C. 2375(b)(2), redesignated as 10 U.S.C. 3452(b)(2), by deleting the date “January 1, 2015” and adding the date “October 13, 1994.” This proposed rule implements the change at 10 U.S.C. 3452(b)(2) by proposing an amendment to the DFARS to eliminate solicitation provisions and contract clauses enacted after October 13, 1994, not including the provisions or clauses referred to in 10 U.S.C. 3452 (e)(1), (e)(2), and (e)(3), from commercial product and commercial service solicitations and contracts, respectively, unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exclude them.

According to data from the Federal Procurement Data System for FY 2020 through FY 2022, DoD awarded approximately 31,968 contracts for commercial products, commercial services, or COTS items to an average of 13,952 unique small entities per year. The proposed rule applies to all entities that do business with DoD and is not expected to have a significant impact on these entities, regardless of business size.

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

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed

rule that would meet the requirements of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D074), in correspondence.

## VII. Paperwork Reduction Act

The proposed 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 203, 204, 212, and 215

Government procurement.

**Jennifer D. Johnson,**  
*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 203, 204, 212, and 215 are proposed to be amended as follows:

- 1. The authority citation for parts 203, 204, 212, and 215 continues to read as follows:

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

### PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

#### 203.171–4 [Amended]

- 2. Amend section 203.171–4 in paragraph (b) by removing “solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services and”.

#### 203.1004 [Amended]

- 3. Amend section 203.1004 in paragraph (a) by removing “, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services,”.

### PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

#### 204.7403 [Amended]

- 4. Amend section 204.7403 in paragraph (b) by removing “contracts, including” and adding “contracts that involve litigation support services, including” in its place.

### PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

- 5. Amend section 212.301—
  - a. In paragraph (f)(i)(B) by removing “section 847 of Pub. L. 110–181” and adding “section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181)” in its place;
  - b. By removing paragraphs (f)(i)(D) and (E);
  - c. By revising paragraphs (f)(ii)(B) through (D);
  - d. By removing paragraph (f)(vi)(C);
  - e. By redesignating paragraphs (f)(vi)(D), (E), and (F) as paragraphs (f)(vi)(C), (D), and (E), respectively;
  - f. By revising paragraph (f)(viii)(D);
  - g. By revising paragraphs (f)(x)(J) through (L), (T), and (Z);
  - h. In paragraph (f)(xi)(A) by removing “Pub. L.” and adding “Public Law” in its place;
  - i. By revising paragraph (f)(xi)(B);
  - j. In paragraph (f)(xii)(C) by removing “227.7102–4(c)” and adding “227.7102–4(c), to comply with 10 U.S.C. 3781–3786” in its place;
  - k. In paragraph (f)(xiv)(D) by removing “232.7102” and adding “232.7102, to comply with 26 U.S.C. 6331(h)” in its place;
  - l. By revising paragraphs (f)(xv)(A) and (B);
  - m. By revising paragraph (f)(xix)(B); and
  - n. By revising paragraph (f)(xx)(A) and (E).

The revisions read as follows:

#### 212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

\* \* \* \* \*

(f) \* \* \*  
(ii) \* \* \*

(B) Use the provision at 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls, as prescribed in 204.7304(a), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 1632 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291).

(C) Use the clause at 252.204–7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, as prescribed in 204.7304(b), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 1632 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291).

(D) Use the clause at 252.204–7012, Safeguarding Covered Defense

Information and Cyber Incident Reporting, as prescribed in 204.7304(c), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 1632 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291).

\* \* \* \* \*

(viii) \* \* \*

(D) Use the provision at 252.219–7012, Competition for Religious-Related Services, as prescribed in 219.270–3, to comply with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92).

\* \* \* \* \*

(x) \* \* \*

(J) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, as prescribed in 225.7009–5, to comply with section 8065 of Public Law 107–117 and the same restriction in subsequent DoD appropriations acts.

(K) Use the clause at 252.225–7017, Photovoltaic Devices, as prescribed in 225.7017–4(a), to comply with section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

(L) Use the provision at 252.225–7018, Photovoltaic Devices—Certificate, as prescribed in 225.7017–4(b), to comply with section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

\* \* \* \* \*

(T) Use the clause at 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in 225.7703–4(d), to comply with section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).

\* \* \* \* \*

(Z) Use the clause at 252.225–7039, Defense Contractors Performing Private Security Functions Outside the United States, as prescribed in 225.302–6, to comply with section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

\* \* \* \* \*

(xi) \* \* \*

(B) Use the provision at 252.226–7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities, as prescribed in 226.7203, to comply with section 853 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136).

\* \* \* \* \*

(xv) \* \* \*

(A) Use the clause at 252.237–7010, Prohibition on Interrogation of

Detainees by Contractor Personnel, as prescribed in 237.173–5, to comply with section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84).

(B) Use the clause at 252.237–7019, Training for Contractor Personnel Interacting with Detainees, as prescribed in 237.171–4, to comply with section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

\* \* \* \* \*

(ix) \* \* \*

(B) Use the clause at 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, as prescribed in 246.270–4, to comply with section 807 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84).

\* \* \* \* \*

(xx) \* \* \*

(A) Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in 247.207, to comply with section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

\* \* \* \* \*

(E) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(d), to comply with section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364).

\* \* \* \* \*

■ 6. Amend section 212.370 by adding paragraphs (b) through (d) to read as follows:

**212.370 Inapplicability of certain provisions and clauses to contracts and subcontracts for the acquisition of commercial products, commercial services, and commercially available off-the-shelf items.**

\* \* \* \* \*

(b) 252.203–7003, Agency Office of the Inspector General.

(c) 252.203–7005, Representation Relating to Compensation of Former DoD Officials.

(d) 252.215–7007, Notice of Intent to Resolicit.

■ 7. Amend section 212.371 by—

■ a. Revising the introductory text; and

■ b. Adding paragraphs (b) through (e).

The revision and additions read as follows:

**212.371 Inapplicability of certain provisions and clauses to contracts for the acquisition of commercially available off-the-shelf items.**

Commercially available off-the-shelf (COTS) items are a subset of commercial products. Therefore, the provisions and clauses listed in 212.370 as not applicable to contracts or subcontracts for the acquisition of commercial products are also not applicable to contracts or subcontracts for the acquisition of COTS items. In addition, the following provisions and clauses published after October 14, 1994, not expressly authorized in law, are not applicable or are modified in their applicability to contracts for the acquisition of COTS items:

\* \* \* \* \*

(b) 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls.

(c) 252.204–7019, Notice of NIST SP 800–171 DoD Assessment Requirements.

(d) 252.204–7020, NIST SP 800–171 DoD Assessment Requirements.

(e) 252.204–7021, Cybersecurity Maturity Model Certification Requirements.

#### 212.504 [Amended]

■ 8. Amend section 212.504—

■ a. By removing paragraph (a)(xiii);

■ b. By redesignating paragraphs (a)(xiv) and (xv) as paragraphs (a)(xiii) and (xiv), respectively; and

■ c. In the newly redesignated paragraph (a)(xiv) by removing “(section 8065 of Pub. L. 107–117)” and adding “(section 8065, Pub. L. 107–117)” in its place.

#### 212.505 [Amended]

■ 9. Amend section 212.505 introductory text by removing “or modified in their applicability” and adding “or are modified in their applicability” in its place.

#### PART 215—CONTRACTING BY NEGOTIATION

■ 10. Amend section 215.371–4—

■ a. In paragraph (a) introductory text by removing “section”; and

■ b. By adding paragraph (a)(7).  
The addition reads as follows:

#### 215.371–4 Exceptions.

(a) \* \* \*

(7) Acquisitions of commercial products and commercial services using FAR part 12 procedures.

\* \* \* \* \*

#### 215.371–6 [Amended]

■ 11. Amend section 215.371–6 by removing “, including solicitations

using FAR part 12 procedures for the acquisition of commercial products and commercial services.”.

[FR Doc. 2023–25160 Filed 11–16–23; 8:45 am]

BILLING CODE 6001–FR–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 212, 225, and 252

[Docket DARS–2023–0042; Req No. DARS–2024–00012–FR]

RIN 0750–AL40

### Defense Federal Acquisition Regulation Supplement: Limitation on the Acquisition of Certain Goods Other Than United States Goods (DFARS Case 2021–D022)

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement two sections of the National Defense Authorization Act for Fiscal Year 2021, one section of the National Defense Authorization Act for Fiscal Year 2022, one section of the National Defense Authorization Act for Fiscal Year 2023, and one section of the Consolidated Appropriations Act, 2023. These statutes remove limitations and restrictions on certain components that are no longer required, add new limitations on other components, subject to exceptions.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 16, 2024, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2021–D022, using any of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2021–D022. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2021–D022” on any attached documents.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2021–D022 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [https://](https://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting.

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

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to revise the DFARS to implement sections 845 and 1603 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283); section 816 of the NDAA for FY 2022 (Pub. L. 117–81); section 853 of the NDAA for FY 2023 (Pub. L. 117–263), and section 8016 of the Consolidated Appropriations Act of 2023 (Pub. L. 117–328). These sections amend 10 U.S.C. 2534, now 10 U.S.C. 4864, to require acquisition of certain items and components from the national technology and industrial base. The national technology and industrial base is defined at 10 U.S.C. 4801 as the United States, Australia, Canada, New Zealand, or the United Kingdom.

Section 845 of the NDAA for FY 2021 amends 10 U.S.C. 4864(a) to update the list of components for naval vessels at paragraphs (a)(2)(A) through (E). Subsequently, section 816 of the NDAA for FY 2022 added to the list of components for naval vessels welded shipboard anchor and mooring chain, without size restrictions, at 10 U.S.C. 4864(a)(2)(F). Section 845 also added components for T–AO 205 class vessels at 10 U.S.C. 4864(a)(4). Section 853 of the NDAA for FY 2023 added T–ARC class vessels at 10 U.S.C. 4864(a)(4) along with the component list for T–AO 205 class vessels. Section 1603 of the NDAA for FY 2021 added limitations on procurement of satellite star trackers at 10 U.S.C. 4864(a)(5). Section 8016 of the Consolidated Appropriations Act, 2023 provided waiver authority to the Secretary of the Service responsible for the procurement of welded shipboard anchor and mooring chain.

Section 845, in updating the list of components for naval vessels at 10 U.S.C. 4864, removed prior paragraphs (a)(2) through (5) and redesignated paragraph (a)(6), components for auxiliary ships (large medium-speed diesel engines), as paragraph (a)(3). The removed paragraphs were: (a)(2) chemical weapons antidote; (a)(3)(A) components for naval vessels consisting of air circuit breakers, welded shipboard anchor and mooring chain with a diameter of four inches or less, vessel propellers; and (a)(3)(B) components of vessel unique to marine applications of gyrocompasses, electronic navigation chart systems, steering controls, pumps,

propulsion and machinery control systems, and totally enclosed lifeboats; (a)(4), valves and machine tools; and (a)(5), ball bearings and roller bearings. Additionally, section 845 struck paragraph (j), Inapplicability to certain contracts to purchase ball bearings or roller bearings, and redesignated paragraph (k), Limitation on certain procurements application process, as paragraph (j).

##### II. Discussion and Analysis

Updates to 10 U.S.C. 2534, now 10 U.S.C. 4864, have been incrementally implemented over time in various DFARS sections under subpart 225.70 as follows: 225.7004, Restriction on acquisition of foreign buses; 225.7006, Restrictions on air circuit breakers for naval vessels; 225.7007, Restrictions on anchor and mooring chain; 225.7008, Waiver of restrictions of 10 U.S.C. 4864; and 225.7010, Restrictions on certain naval vessel and auxiliary ship components. This proposed rule aggregates the requirements subject to 10 U.S.C. 4864 under one comprehensive DFARS section at 225.7004 to facilitate comprehension of and compliance with the limitations, exceptions, and waivers applicable to acquisition of certain goods other than U.S. goods. As a result, DFARS sections 225.7006 through 225.7008 and section 225.7010 are proposed to be incorporated, as appropriate and in alignment with the statutory requirements being implemented, into a single DFARS section 225.7004 titled, “Restrictions on the procurement of goods other than U.S. goods.” Accordingly, sections 225.7006 through 225.7008 and 225.7010 would be removed and reserved. DFARS section 225.7009, Restriction on ball and roller bearings, remains as a standalone section as the authority for this section is derived from Appropriations Acts, and not from 10 U.S.C. 4864.

DFARS section 225.7004, Restrictions on the procurement of goods other than U.S. goods, is established as the framework for all coverage related to implementing 10 U.S.C. 4864. The current DFARS section 225.7004, Restriction on acquisition of foreign buses, is incorporated into this new redesignated section along with relevant coverage to implement the statutes addressed in section I, Background, of this preamble. The new DFARS section 225.7004 addresses the following:

- 225.7004–0, Scope; added to state that the section implements 10 U.S.C. 4864.
- 225.7004–1, Definitions; adds new definitions for “national technology and industrial base” and “star tracker.”