

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. 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, 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.”

- 225.7004–2, Restrictions; addresses end items and components that must be acquired from the national technology and industrial base.

- 225.7004–3, Exceptions; provides the exceptions that apply to the end items and components described in 225.7004–1.

- 225.7004–4, Implementation of restriction on certain naval vessel components; implements 10 U.S.C. 4864(h) that prohibits the use of contract clauses or certifications to implement the restriction at 225.7004–1(b) for naval vessel components. Agencies must use management and oversight techniques that achieve the objectives of this section without imposing a significant management burden on the Government or the contractor involved.

- 225.7004–5, Additional restrictions on anchor and mooring chain; addresses additional requirements imposed by DoD Appropriations Acts, most recently by section 8016, Consolidated Appropriations Act, 2023 (Pub. L. 117.328). While 10 U.S.C. 4864 also restricts acquisition of welded shipboard anchor and mooring chain, when used as a component of a naval vessel, the Appropriations Act restriction takes precedence over the restriction of 10 U.S.C. 4864.

- 225.7004–6, Waiver of restrictions; addresses waivers that apply to the end items and components described in 225.7004–1.

- 225.7004–7, Contract clauses; provides clause prescriptions for DFARS 252.225–7019, Restriction on Acquisition of Anchor and Mooring Chain; DFARS 252.225–7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines; new DFARS clause 252.225–70XX, Restriction on Acquisition of Components of T–AO 205 and T–ARC Class Vessels; and new DFARS clause 252.225–70YY, Restriction on Acquisition of Certain Satellite Components.

Additional changes are proposed to DFARS 212.301, Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services. The removal of solicitation provision 252.225–7037, Evaluation of Offers for Air Circuit Breakers, and contract clause 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, is proposed because section 845 of the NDAA for FY 2021 removed this component from 10 U.S.C. 4864. The addition of the following three clauses is proposed: 252.225–7019, Restriction on Acquisition of Anchor and Mooring Chain; 252.225–70XX, Restriction on Acquisition of

Components of T–AO 205 and T–ARC Class Vessels; and 252.225–70YY, Restriction on Acquisition of Certain Satellite Components.

DoD proposes to remove and reserve sections 225.7006 through 225.7008 and 225.7010 due to the new consolidated framework at DFARS 227.7004 for implementing 10 U.S.C. 4864. DFARS 225.7006, Restriction on air circuit breakers for naval vessels, is not incorporated into the new section 225.7004, because section 845 of the NDAA for FY 2021 removed this component from 10 U.S.C. 4864. Section 8100 of the Consolidated Appropriations Act, 2023, only addresses air circuit breakers in conjunction with a single Department of Navy program. Therefore, the section on air circuit breakers will not be retained in the DFARS in consonance with DFARS drafting conventions.

DFARS section 225.7009, Restriction on ball and roller bearings, is retained, notwithstanding its removal from 10 U.S.C. 4864 by section 845 in the NDAA for FY 2021, since it is needed to implement DoD Appropriations Act restrictions. See, for example, section 8033 of the Consolidated Appropriations Act, 2023.

Revisions to DFARS clause 252.225–7019, Restriction on Acquisition of Anchor and Mooring Chain, are proposed to update the prescription cross-reference in the introductory text to read “225.7004–7(a)” and remove from paragraphs (b) and (d) the phrase “four inches or less in diameter”. This language is not included in section 816 of the NDAA for FY 2022 that added this component to 10 U.S.C. 4864(a)(2)(F). This phrase is also not included in section 8016 of the Consolidated Appropriations Act, 2023 on this subject.

DFARS provision 252.225–7037, Evaluation of Offers for Air Circuit Breakers, and DFARS clause 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, are proposed to be removed and reserved. Section 845 deleted this component from 10 U.S.C. 4864, and the Consolidated Appropriations Act, 2023, section 8100 only addresses air circuit breakers in conjunction with a single Department of Navy program.

Two new clauses are proposed to be added: 252.225–70XX, Restriction on Acquisition of Components of T–AO 205 and T–ARC Class Vessels; and 252.225–70YY, Restriction on Acquisition of Certain Satellite Components. In addition, the cross reference in the introductory text of DFARS 252.225–7062 is proposed to be

revised to reflect the new location of the clause prescription in 225.7004–7.

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 rule proposes to create two new contract clauses:

(1) DFARS clause 252.225–70XX, Restriction on Acquisition of Components of T–AO 205 Class Vessels, for use in solicitations and contracts requiring the acquisition of components of T–AO 205 and T–ARC class vessels, including solicitations and contracts that exceed the SAT and that use FAR part 12 procedures for the acquisition of commercial products, including COTS items, and for the acquisition of commercial services; and

(2) DFARS clause at 252.225–70YY, Restriction on Acquisition of Satellite Star Trackers, for use in solicitations and contracts requiring the acquisition of satellite star trackers, including solicitations and contracts that exceed the SAT and that use FAR part 12 procedures for the acquisition of commercial products, including COTS items, and for the acquisition of commercial services.

Sections 845 and 1603 of the NDAA for FY 2021 (Pub. L. 116–283) and section 852 of the NDAA for FY 2023 (Pub. L. 117–263), which amend 10 U.S.C. 4864, are implemented in this proposed rule. 10 U.S.C. 4864 does not apply to a contract or subcontract for an amount that does not exceed the SAT. Therefore, the clauses will not apply to acquisitions at or below the SAT. However, DoD intends to apply the clauses to contracts for the acquisition of commercial products including COTS items and for the acquisition of commercial services.

A. Applicability to Contracts for the Acquisition of Commercial Products Including COTS Items and for the Acquisition of Commercial Services

10 U.S.C. 3452 exempts contracts and subcontracts for the acquisition of commercial products, including COTS items, and commercial services from provisions of law enacted after October 13, 1994, unless the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) makes a written determination that it would not be in the best interest of DoD to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract requirement, except for a provision of law that—

- Provides for criminal or civil penalties;
- Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 4862 or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 4863; or
- Specifically refers to 10 U.S.C. 3452 and states that it shall apply to contracts and subcontracts for the acquisition of commercial products (including COTS items) and commercial services.

The statute implemented in this proposed rule does not impose criminal or civil penalties, does not require purchase pursuant to 10 U.S.C. 4862 or 4863, and does not refer to 10 U.S.C. 3452. Therefore, sections 845 and 1603 of the NDAA for FY 2021 and section 853 of the NDAA for FY 2023 will not apply to the acquisition of commercial services or commercial products including COTS items unless a written determination is made. Due to delegations of authority, the Principal Director, Defense Pricing and Contracting, is the appropriate authority to make this determination. DoD intends to make that determination to apply this statute to the acquisition of commercial products, including COTS items, and to the acquisition of commercial services.

B. Determination

Consistent with 10 U.S.C. 3452, and based on the findings above, not applying these clauses to contracts and subcontracts for the acquisition of commercial products including COTS items and for the acquisition of commercial services would exclude contracts intended to be covered by the statute and undermine the overarching purpose of the statute. Accordingly, DoD plans to apply the statute to contracts and subcontracts for the acquisition of commercial products including COTS items and for the acquisition of commercial services.

IV. Expected Impact of the Rule

The proposed rule adds procurement limitations on the acquisition of star trackers for certain national security satellites and certain components for T-AO 205 and T-ARC class vessels, requiring they are manufactured in the national technology and industrial base: the United States, Australia, Canada, New Zealand, or the United Kingdom in accordance with 10 U.S.C. 4864.

The proposed rule is not expected to have a significant impact on the Government, offerors, or contractors. The satellite star trackers and components for the T-AO 205 and T-ARC class of vessels are the types of items that are readily available in the

marketplace, so limitation to national technology and industrial base sources is not viewed as having a significant impact on the availability of sources. Further, the proposed rule provides waiver procedures to the limitation.

The domestic source restriction does not apply to—

(1) Contracts or subcontracts that do not exceed the simplified acquisition threshold;

(2) The acquisition of spare or repair parts needed to support components for naval vessels manufactured outside the United States; and

(3) Large medium-speed diesel engines for icebreakers or special mission ships.

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.*, because the rule will continue to provide small businesses the opportunity to participate in the manufacture of star trackers for certain national security satellites and certain components for T-AO 205 and T-ARC class vessels in support of the national technology and industrial base. 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 statutes that remove limitations and restrictions no longer required, and that require the procurement of star trackers for certain national security satellites, as well as certain components for T-AO 205 and T-ARC class vessels, from the national technology and industrial base: the United States, Australia, Canada, New Zealand, or the United Kingdom.

The objective of the proposed rule is 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); and section 853 of the NDAA for FY 2023 (Pub. L. 117–263). These NDAA sections are the legal basis for the proposed rule. 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). DoD reviewed data from the Federal Procurement Data System for FY 2018, 2019, and 2020, excluding contracts that do not exceed the simplified acquisition threshold, for the following product service codes: 7G22, 2835, 2010, 3815, 1040, 5925, 2040, 2010, beginning with 70 (for example, information technology hardware and software), and 7435. DoD made an average of 651 awards per year, of which 385 were made to small entities, an average of 59 percent awarded to small entities over the three fiscal years.

It is expected that this proposed rule, when finalized, will benefit small businesses. The proposed rule will continue to provide small businesses the opportunity to participate in the manufacture of star trackers for certain national security satellites and certain components for T-AO 205 and T-ARC class vessels in support of the national technology and industrial base.

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

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

The proposed rule exempts acquisitions equal to or less than the simplified acquisition threshold. There are no other known significant alternative approaches to the proposed rule that would meet the requirements of the statute.

DoD invites comments from small business concerns and other interested

parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed 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 2021–D022), in correspondence.

VII. Paperwork Reduction Act

This 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 212, 225, and 252 Government procurement.

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

Therefore, 48 CFR parts 212, 225, and 252 are proposed to be amended as follows:

- 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

- 2. Amend section 212.301 by—
- a. Removing paragraphs (f)(x)(X) and (Y);
- b. Redesignating paragraphs (f)(x)(M) through (W) as (f)(x)(N) through (X);
- c. Adding a new paragraph (f)(x)(M);
- d. Redesignating paragraphs (f)(x)(Z) through (NN) as paragraphs (f)(x)(Y) through (MM);
- e. In the newly redesignated paragraph (f)(x)(Y), removing “Pub. L.” and adding “Public Law” in its place;
- f. In the newly redesignated paragraph (f)(x)(MM), removing “225.7010–5” and adding “225.7004–7(b)” in its place; and
- g. Adding paragraphs (f)(x)(NN) through (OO).

The additions read as follows:

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

* * * * *

- (f) * * *
- (x) * * *

(M) Use the clause at 252.225–7019, Restriction on Acquisition of Anchor and Mooring Chain, as prescribed in 225.7004–7(a), to comply with 10 U.S.C. 4864 and section 8041 of the Fiscal Year

1991 DoD Appropriations Act (Pub. L. 101–511) and similar sections in subsequent DoD appropriations acts.

* * * * *

(NN) Use the clause at 252.225–70XX, Restriction on Acquisition of Components of T–AO 205 and T–ARC Class Vessels, as prescribed in 225.7004–7(c), to comply with 10 U.S.C. 4864.

(OO) Use the clause at 252.225–70YY, Restriction on Acquisition of Certain Satellite Components, as prescribed in 225.7004–7(d), to comply with 10 U.S.C. 4864.

* * * * *

PART 225—FOREIGN ACQUISITION

225.7001 [Amended]

- 3. Amend section 225.7001 in the definition of “Component” by removing “225.7007” and adding “225.7004–2(b)(6)” in its place.

- 4. Revise section 225.7004 to read as follows:

225.7004 Restrictions on the procurement of goods other than U.S. goods.

- 5. Add section 225.7004–0 to read as follows:

225.7004–0 Scope.

This section implements 10 U.S.C. 4864.

- 6. Revise sections 225.7004–1 through 225.7004–4 to read as follows:

Sec.

* * * * *

- 225.7004–1 Definitions.
- 225.7004–2 Restrictions.
- 225.7004–3 Exceptions.
- 225.7004–4 Implementation of restriction on certain naval vessel components.

* * * * *

225.7004–1 Definitions.

As used in this section—
National technology and industrial base means the persons and organizations that are engaged in production activities conducted within the United States, Australia, Canada, New Zealand, and the United Kingdom of Great Britain and Northern Ireland (United Kingdom). (10 U.S.C. 4801)

Star tracker means a navigational tool used in a satellite weighing more than 400 pounds whose principal purpose is to support the national security, defense, or intelligence needs of the U.S. Government.

225.7004–2 Restrictions.

Except as provided in 225.7004–3, do not acquire any of the following items, either as end products or components, unless the manufacturer of the items is part of the national technology and industrial base:

(a) Buses, if multipassenger motor vehicles are purchased, leased, rented, or made available under contracts for transportation services.

(b) Components for naval vessels, to the extent they are unique to marine applications (see also 225.7004–4 for implementation of the restriction for naval vessels):

- (1) Gyrocompasses.
- (2) Electronic navigation chart systems.
- (3) Steering controls.
- (4) Propulsion and machinery control systems.
- (5) Totally enclosed lifeboats.
- (6) Welded shipboard anchor and mooring chain. See also 225.7004–5.

(c) Large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy.

(d) For T–AO 205 and T–ARC class vessels:

- (1) Auxiliary equipment, including pumps, for all shipboard services.
- (2) Propulsion system components, including engines, reduction gears, and propellers.
- (3) Shipboard cranes.
- (4) Spreaders for shipboard cranes.
- (e) Star trackers.

225.7004–3 Exceptions.

(a) *Contracts under the simplified acquisition threshold.* The restrictions at 225.7004–2 do not apply to a contract or subcontract that does not exceed the simplified acquisition threshold.

(b) *Buses.* The restriction at 225.7004–2(a) does not apply in the following circumstances:

(1) Buses manufactured outside the national technology and industrial base are needed for temporary use because buses manufactured in the national technology and industrial base are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the national technology and industrial base.

(2) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the national technology and industrial base may be used for temporary periods of time. Such use may not however, exceed the period of time needed to meet the special requirement.

(3) Buses manufactured outside the national technology and industrial base are available at no cost to the U.S. Government.

(c) *Components for naval vessels.* The restriction at 225.7004–2(b) does not apply to acquisition of spare or repair parts needed to support components for naval vessels manufactured outside the United States. Support includes the purchase of spare gyrocompasses, electronic navigation chart systems, steering controls, propulsion and machinery control systems, totally enclosed lifeboats, and welded shipboard anchor and mooring chain.

(d) *Components for auxiliary ships.* The restriction at 225.7004–2(c) does not apply to large medium-speed engines for icebreakers or special mission ships.

(e) *Star trackers.* The restriction at 225.7004–2(e) does not apply to acquisition programs that have received Milestone A approval as defined in 10 U.S.C. 4211 before October 1, 2021, as documented by the requiring activity official performing program management responsibilities. The contracting officer shall include the Milestone A approval documentation in the contract file.

225.7004–4 Implementation of restriction on certain naval vessel components.

(a) The statute at 10 U.S.C. 4864(h) prohibits the use of contract clauses or certifications to implement the restriction at 225.7004–2(b) for naval vessel components.

(b) Agencies shall accomplish implementation of the restriction at 225.7004–2(b) through use of management and oversight techniques that achieve the objectives of this section without imposing a significant management burden on the Government or the contractor involved.

■ 7. Add sections 225.7004–5 through 225.7004–7 to read as follows:

Sec.

* * * * *

225.7004–5 Additional restrictions on anchor and mooring chain.

225.7004–6 Waiver of restrictions.

225.7004–7 Contract clauses.

* * * * *

225.7004–5 Additional restrictions on anchor and mooring chain.

(a) In accordance with section 8041 of the Fiscal Year 1991 DoD Appropriations Act (Pub. L. 101–511) and similar sections in subsequent DoD appropriations acts, do not acquire welded shipboard anchor and mooring chain, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) The statute at 10 U.S.C. 4864 also restricts acquisition of welded shipboard anchor and mooring chain, when used as a component of a naval vessel; however, the Appropriations Act restriction described in paragraph (a) of this section takes precedence over the restriction of 10 U.S.C. 4864 cited in 225.7004–2(b)(6).

225.7004–6 Waiver of restrictions.

(a) *Welded shipboard anchor and mooring chain.* (1) In accordance with section 8016 of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), the secretary of the department responsible for acquisition may waive the restrictions in 225.7004–2(b)(6) and 225.7004–5, on a case-by-case basis, if—

(i) Sufficient domestic suppliers are not available to meet DoD requirements on a timely basis; and

(ii) The acquisition is necessary to acquire capability for national security purposes.

(2) Document the waiver in a written determination and findings containing—

(i) The factors supporting the waiver; and

(ii) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(3) Provide a copy of the determination and findings to the House and Senate Committees on Appropriations.

(b) *Star trackers.* The waiver criteria at paragraph (c) of this section apply, except that the USD(A&S) may delegate the authority to waive a restriction for a star tracker for a particular foreign country to the service acquisition executive, without power of redelegation (section 1603, National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283)).

(c) *Waiver of restrictions of 10 U.S.C. 4864(a).* The restrictions on certain foreign purchases at 225.7004–2 may be waived, except as provided in paragraphs (a) and (b) of this section, as follows:

(1)(i) USD(A&S), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—

(A) U.S. producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States

discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(ii) A notice of the determination to exercise the waiver authority shall be published in the **Federal Register** and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) The effective period of the waiver shall not exceed 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver shall be applied as directed or authorized in the waiver to—

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(2) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the national technology and industrial base are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the national technology and industrial base.

(iv) Application of the restriction is not in the national security interests of the United States.

(v) Application of the restriction would adversely affect a U.S. company.

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of national technology and industrial base origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of national technology and industrial base origin.

225.7004–7 Contract clauses.

(a) Unless a waiver has been granted, use the clause at 252.225–7019,

Restriction on Acquisition of Anchor and Mooring Chain, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require welded shipboard anchor or mooring chain.

(b) Use the clause at 252.225-7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy unless—

(1) An exception at 225.7004-3(d) applies; or

(2) A waiver has been granted.

(c) Unless a waiver has been granted, use the clause at 252.225-70XX, Restriction on Acquisition of Components of T-AO 205 and T-ARC Class Vessels, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require components of T-AO 205 and T-ARC class vessels.

(d) Use the clause at 252.225-70YY, Restriction on Acquisition of Certain Satellite Components, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold unless—

(1) An exception at 225.7004-3(e) applies; or

(2) A waiver has been granted.

225.7006, 225.7006-1, 225.7006-2, 225.7006-3, and 225.7006-4 [Removed and Reserved]

■ 8. Remove and reserve sections 225.7006, 225.7006-1, 225.7006-2, 225.7006-3, and 225.7006-4.

225.7007, 225.7007-1, 225.7007-2, and 225.7007-3 [Removed and Reserved]

■ 9. Remove and reserve sections 225.7007, 225.7007-1, 225.7007-2, and 225.7007-3.

225.7008 [Removed and Reserved]

■ 10. Remove and reserve section 225.7008.

225.7009-1 [Amended]

■ 11. Amend section 225.7009-1 by removing “Section” and adding “section” in its place.

225.7010, 225.7010-1, 225.7010-2, 225.7010-3, 225.7010-4, and 225.7010-5 [Removed and Reserved]

■ 12. Remove and reserve sections 225.7010, 225.7010-1, 225.7010-2, 225.7010-3, 225.7010-4, and 225.7010-5.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. Amend section 252.225-7019—

■ a. By revising the section heading, introductory text, clause date, and paragraph (a);

■ b. In paragraph (b) by removing “, four inches or less in diameter,”; and

■ c. In paragraph (d) by removing “, four inches or less in diameter”.

The revisions read as follows:

252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain.

As prescribed in 225.7004-7(a), use the following clause:

Restriction on Acquisition of Anchor and Mooring Chain (DATE)

(a) *Definition.* As used in this clause—
Component means an article, material, or supply incorporated directly into an end product.

* * * * *

252.225-7037 [Removed and Reserved]

■ 14. Remove and reserve section 252.225-7037.

252.225-7038 [Removed and Reserved]

■ 15. Remove and reserve section 252.225-7038.

252.225-7062 [Amended]

■ 16. Amend section 252.225-7062 introductory text by removing “225.7010-5” and adding “225.7004-7(b)” in its place.

■ 17. Add section 252.225-70XX to read as follows:

252.225-70XX Restriction on Acquisition of Components of T-AO 205 and T-ARC Class Vessels.

As prescribed in 225.7004-7(c), use the following clause:

Restriction on Acquisition of Components of T-AO 205 and T-ARC Class Vessels (DATE)

(a) *Restriction.*

(1) In accordance with 10 U.S.C. 4864, the following components of T-AO 205 and T-ARC class vessels must be manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland (United Kingdom):

(i) Auxiliary equipment, including pumps, for all shipboard services.

(ii) Propulsion system components, including engines, reduction gears, and propellers.

(iii) Shipboard cranes.

(iv) Spreaders for shipboard cranes.

(2) The Contractor shall deliver under this contract only T-AO 205 and T-ARC class vessel components, as described in paragraph (a)(1) of this clause, manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom (10 U.S.C. 4864).

(b) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (b), in subcontracts for the components described in paragraph (a)(1) of this clause that exceed the simplified acquisition threshold, including subcontracts for commercial products and commercial services.

(End of clause)

■ 18. Add section 252.225-70YY to read as follows:

252.225-70YY Restriction on Acquisition of Certain Satellite Components.

As prescribed in 225.7004-7(d), use the following clause:

Restriction on Acquisition of Certain Satellite Components (DATE)

(a) *Definition.* As used in this clause—

Star tracker means a navigational tool used in a satellite weighing more than 400 pounds whose principal purpose is to support the national security, defense, or intelligence needs of the U.S. Government.

(b) *Restriction.* In accordance with 10 U.S.C. 4864, a star tracker must be manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland (United Kingdom). The Contractor shall deliver under this contract only star trackers manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom.

(c) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts for star trackers that exceed the simplified acquisition threshold, including subcontracts for commercial products and commercial services.

(End of clause)

[FR Doc. 2023-25161 Filed 11-16-23; 8:45 am]

BILLING CODE 6820-ep-P