

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008–D029.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 217 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 217 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 217 and 252 continues to read as follows:

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

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.7404–4 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

217.7404–4 Limitations on obligations.

* * * * *

(b) In determining the appropriate amount to obligate, the contracting officer shall assess the contractor's proposal for the undefinitized period and shall obligate funds only in an amount consistent with the contractor's requirements for the undefinitized period.

■ 3. Section 217.7404–6 is revised to read as follows:

217.7404–6 Allowable profit.

When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the contracting activity shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price;

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract; and

(c) The requirements at 215.404–71–3(d)(2). The risk assessment shall be documented in the contract file.

217.7405 [Redesignated as 217.7406]

■ 4. Section 217.7405 is redesignated as section 217.7406.

■ 5. A new section 217.7405 is added to read as follows:

217.7405 Plans and reports.

(a) To provide for enhanced management and oversight of UCAs, departments and agencies shall—

(1) Prepare and maintain a Consolidated UCA Management Plan; and

(2) Prepare semi-annual Consolidated UCA Management Reports addressing each UCA with an estimated value exceeding \$5 million.

(b) Consolidated UCA Management Reports and Consolidated UCA Management Plan updates shall be submitted to the Office of the Director, Defense Procurement and Acquisition Policy, by October 31 and April 30 of each year in accordance with the procedures at PGI 217.7405.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.217–7027 [Amended]

■ 6. Section 252.217–7027 is amended in the introductory text by removing “217.7405” and adding in its place “217.7406”.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AG31

Defense Federal Acquisition Regulation Supplement; Trade Agreements—Costa Rica and Peru (DFARS Case 2008–D046)

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 Costa Rica, and the United States-Peru Trade Promotion Agreement. The trade agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials and specify procurement procedures designed to ensure fairness.

DATES: *Effective date:* July 29, 2009.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 28, 2009, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008–D046, 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 2008–D046 in the subject line of the message.

○ *Fax:* 703–602–7887.

○ *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 trade agreement provisions and clauses in DFARS Part 252 to implement the Dominican Republic-Central America-United States Free Trade Agreement with respect to Costa Rica, and the United States-Peru Trade Promotion Agreement. Congress approved these trade agreements in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53) and the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138) (19 U.S.C. 3805 note). Presidential proclamations were published in the **Federal Register** on December 30, 2008, with regard to Costa Rica (73 FR 79585) and on January 22, 2009, with regard to Peru (74 FR 4105). The corresponding determinations by the Office of the United States Trade Representative were published in the **Federal Register** on January 6, 2009 (74 FR 472), and

January 23, 2009 (74 FR 4264), respectively. The trade agreements waive the applicability of the Buy American Act for DoD acquisition of some foreign supplies and construction materials from Costa Rica and Peru and specify procurement procedures designed to ensure fairness.

In addition, this rule amends DFARS 225.003 to exclude Oman from the definition of "Free Trade Agreement country" for purposes of DoD acquisitions. Oman was added to the Federal Acquisition Regulation definition of "Free Trade Agreement country" to implement the United States-Oman Free Trade Agreement. However, the government procurement obligations in the United States-Oman Free Trade Agreement do not apply to DoD.

For administrative purposes only, the corresponding amendments to DFARS 252.212-7001, to update the dates of listed clauses affected by this rule, are shown with the amendments to DFARS Case 2008-D003 published elsewhere in this edition of the **Federal Register**.

This rule was 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 Costa Rica and Peru, 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 acquisitions 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 2008-D046.

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 Costa Rica and the United States-Peru Trade Promotion Agreement, as approved by Congress in Public Laws 109-53 and 110-138. The trade agreement with Costa Rica took effect on January 1, 2009, and the trade agreement with Peru took effect on February 1, 2009. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

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

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

PART 225—FOREIGN ACQUISITION

2. Section 225.003 is amended as follows:

a. By redesignating paragraphs (7) through (12) as paragraphs (8) through (13) respectively; and

b. By adding a new paragraph (7) to read as follows:

225.003 Definitions.

* * * * *

(7) *Free Trade Agreement country* does not include Oman.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225-7021 is amended as follows:

a. By revising the clause date and paragraph (a)(3)(ii); and

b. In paragraph (a)(3)(iv) by removing "Costa Rica,". The revised text reads as follows:

252.225-7021 Trade Agreements.

* * * * *

TRADE AGREEMENTS (JUL 2009)

(a) * * *

(3) * * *

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Peru, or Singapore);

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4. Section 252.225-7036 is amended by revising the clause date and paragraph (a)(7) 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 (JUL 2009)

(a) * * *

(7) *Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Peru, or Singapore;

* * * * *

5. Section 252.225-7045 is amended as follows:

a. By revising the clause date;

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

c. In paragraph (a), in the definition of "Designated country", paragraph (4), by removing "Costa Rica,".

The revised text reads as follows:

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

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BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (JUL 2009)

(a) * * *

Designated country means—

* * * * *

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Peru, or Singapore);

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