

determination of the inapplicability of the Buy American Act to the acquisition of end products from that country. There is only one effect of a country being listed in paragraph (b). Although the evaluation procedures are the same, regardless of which paragraph a country is listed in, if an end product is from a country listed in paragraph (b), when purchasing the end product, the contracting officer has to prepare an individual determination and finding that the end product is exempt from application of the Buy American Act. Over time, the qualifying countries in paragraph (b) are moved to paragraph (a) when all the conditions for arriving at a blanket determination are met.

This final rule implements the recent blanket determination by USD(AT&L) at DFARS 225.872-1 by removing Finland from the list of qualifying countries in paragraph (b) and adding Finland to the list of qualifying countries in paragraph (a). This means that the contracting officer no longer needs to prepare an individual determination and findings when making an award to an offeror of an end product from Finland. However, since Finland is a qualifying country, this was a routine paperwork requirement, and the removal of this requirement only impacts the internal operating procedures of the Government.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and public comment is not required in accordance with 41 U.S.C. 418b(a).

C. Paperwork Reduction Act

This rule does not impose any new 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 Part 225

Government procurement.

Ynette R. Shelkin,

Editor, 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. 421 and 48 CFR chapter 1.

■ 2. Section 225.872-1 is amended by revising paragraphs (a) and (b) to read as follows:

225.872-1 General.

(a) As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act or the Balance of Payments Program to the acquisition of qualifying country end products from the following qualifying countries:

Australia
Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
Finland
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

(b) Individual acquisitions of qualifying country end products from the following qualifying country may, on a purchase-by-purchase basis (see 225.872-4), be exempted from application of the Buy American Act and the Balance of Payments Program as inconsistent with the public interest:

Austria
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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

Defense Federal Acquisition Regulation Supplement; Letter Contract Definitization Schedule (DFARS Case 2007-D011)

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

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, a proposed rule

amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements regarding definitization of letter contracts. The rule specifies that DoD letter contracts will be definitized using the DFARS procedures applicable to all other undefinitized contract actions.

DATES: *Effective Date:* June 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD(AT&L) DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-8383; facsimile 703-602-0350. Please cite DFARS Case 2007-D011.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a proposed rule at 74 FR 34292 on July 15, 2009, to clarify requirements regarding definitization of letter contracts. The period for public comment closed on September 14, 2009. The differences between section 16.603 of the Federal Acquisition Regulation (FAR) and DFARS subpart 217.74 definitization requirements confused the acquisition community. This final rule clarifies at DFARS 216.603-2(c)(3) that the definitization requirements at DFARS 217.7404-3(a) apply to DoD letter contracts instead of the requirements at FAR 16.603-2(c)(3). This approach provides consistency in the manner in which DoD manages its undefinitized contract actions, and is in line with the specific provisions of 10 U.S.C. 2326 relating to DoD use of undefinitized contract actions.

DoD received no comments on the proposed rule. Therefore, DoD is finalizing the proposed rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule.

B. Regulatory Flexibility Act

This rule will not 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 it clarifies existing requirements pertaining to undefinitized contract actions.

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 Part 216

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 216 continues to read as follows:

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

■ 2. Section 216.603–2 is added to read as follows:

216.603–2 Application.

(c)(3) In accordance with 10 U.S.C. 2326, establish definitization schedules for letter contracts following the requirements at 217.7404–3(a) instead of the requirements at FAR 16.603–2(c)(3).

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 228, 231, and 252**

RIN 0750–AF72

Defense Federal Acquisition Regulation Supplement; Ground and Flight Risk Clause (DFARS Case 2007–D009)

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 revise and combine contract clauses addressing assumption of risk of loss under contracts that furnish aircraft to the Government. The final rule establishes requirements that apply consistently to all contract types.

DATES: *Effective Date:* June 8, 2010.

FOR FURTHER INFORMATION CONTACT: Julian Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:**A. Background**

The DFARS clauses at 252.228–7001, Ground and Flight Risk, and 252.228–7002, Aircraft Flight Risk, are presently used in contracts that involve the furnishing of aircraft to the Government. The clause at 252.228–7001 is used in negotiated fixed-price contracts, and the

clause at 252.228–7002 is used in cost-reimbursement contracts. A proposed rule was published in the **Federal Register** at 72 FR 69177 on December 7, 2007. This final rule revises and combines the two clauses into a single ground and flight risk clause, applying requirements consistently to all contract types. In addition, a new subsection is added at DFARS 231.205–19 to explain the treatment of insurance costs under the new clause and all similar clauses.

The final rule changes include—

- Applying the clause to all contracts for the purchase, development, production, maintenance, repair, flight, or overhaul of aircraft, with exceptions for contracts for activities incidental to the normal operations of aircraft, FAR Part 12 contracts, and contracts where a non-DoD customer has declined to accept the risk of loss for its aircraft asset;

- Adding a requirement for inclusion of the clause in subcontracts at all tiers;

- Adding a statement that the Government property clause is not applicable if the Government withdraws its self-insurance coverage;

- Adding a statement that commercial insurance costs or self-insurance charges that duplicate the Government's self-insurance are unallowable; and

- Establishing a share of loss for the contractor that is the lesser of \$100,000 or twenty percent of the estimated contract cost or price. This is consistent with the contractor's share of loss presently specified in the clause at 252.228–7002. The clause at 252.228–7001 presently prescribes a share of loss of \$25,000 for the contractor.

B. Public Comments

Three respondents submitted comments on the proposed rule. Specific comments received are addressed in paragraphs 1 through 8 of this section.

1. Applicability

Comment: The respondent recommended adding an additional exception to the requirement for inclusion of the Ground and Flight Risk clause by inserting a new paragraph (b)(1)(iv) in DFARS 228.370 to read: “For Commercial Derivative Aircraft that continue to be maintained at FAA Airworthiness Standards and the work will be conducted at a licensed FAA Repair Station.”

Response: Commercial Derivative Aircraft are militarized versions of commercial aircraft platforms. Their repair at FAA repair stations most often denotes a commercial services contract. Normal commercial terms and

conditions would apply and, thus, payment for insurance and acceptance of FAA standards is appropriate. In addition to adding the recommended new exception, DoD is changing DFARS 228.370(b)(1)(ii) to read: “Awarded under FAR Part 12 for the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft, or otherwise involving the furnishing of aircraft.”

2. Compliance

Comment: Two comments addressed potentially confusing language on compliance and the cost of compliance. One respondent indicated that paragraph (b)(2)(iii) of DFARS 228.370 was confusing as to intent and purpose. The respondent was concerned that, when a contracting officer expressly defines “contractor premises,” the contractor might be able to avoid compliance with DCMAI 8210.1 (the Joint Instruction) by moving performance to a different location. Another respondent commented that DFARS 228.370 appears to require the Ground and Flight Risk clause for all aircraft, including unmanned aerial vehicles, without taking into account significant variations in size, cost, or vehicle ceiling. The respondent expressed concern that use of the clause constitutes costly overkill in cases of small/micro unmanned aerial vehicles (UAVs).

Response: DoD believes the language is clear and unambiguous as is, and it presents no meaningful basis for a contractor to avoid compliance with the DCMAI 8210.1. The definition of “contractor premises” is applicable solely to the determination of the Government's acceptance of the risk of loss. DFARS 252.228–7001(b) requires the contractor to assure compliance with DCMAI 8210.1 regardless of the location of the aircraft.

With regard to the cost of compliance, DFARS 228.370(b)(2)(i) allows tailoring of the definition of “aircraft” to appropriately cover atypical and “nonconventional” aircraft. If contracting officers wish to omit small/micro UAVs, the clause allows that flexibility. The contracting officer is required to make this determination on a case-by-case basis in coordination with the program office. While the respondent's concerns could be legitimate in some cases, these concerns should be addressed during the preaward phase on an individual contract basis. There is sufficient flexibility in the approval process for the clause to recognize unique requirements or the absence of standard