

paragraph (a) of this section, the contracting officer may use leasing in the acquisition of commercial vehicles and equipment whenever the contracting officer determines that leasing of such vehicles is practicable and efficient (10 U.S.C. 2401a).

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48 CFR Parts 225 and 252

[DFARS Case 96-D308]

Defense Federal Acquisition Regulation Supplement; Designation of Singapore

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Singapore as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative.

DATES: *Effective date:* April 18, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD (A&D) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131. Telefax (703) 602-0350.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the DFARS to add Singapore as a Designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative (USTR) (61 FR 11233, March 19, 1996). This designation does not apply to procurements by the U.S. Army Corps of Engineers, in accordance with the USTR's direction. The USTR may revoke this designation if Singapore has not completed negotiations on its accession to the World Trade Organization Government Procurement Agreement by July 31, 1996.

The Director of Defense Procurement has authorized a class deviation from the clause at FAR 52.225-15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement, to add Singapore to the list of designated countries. This DFARS rule likewise amends the clause at DFARS 252.225-7007, Trade Agreement, which the Department of Defense uses instead of the clause at FAR 52.225-9, Buy American Act—Trade Agreements—

Balance of Payments Program, and adds an Alternate I to the DFARS clause for use by the U.S. Army Corps of Engineers.

B. Regulatory Flexibility Act

This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96-D308 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply. This final rule does not impose any new information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

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 225.408 is amended by revising the title and paragraph (a)(2) to read as follows:

225.408 Solicitation provisions and contract clauses.

(a) * * *

(2) Use the clause at 252.225-7007, Trade Agreements, instead of the clause at FAR 52.225-9, Buy American Act—Trade Agreements—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225-7007 is amended by revising the clause title, clause date, and paragraph (a)(3), and by adding Alternate I to read as follows:

252.225-7007 Trade Agreements.

* * * * *

Trade Agreements (Apr 1996)

(a) *Definitions.* * * *

(3) *Designated country means:*

- Aruba
- Austria
- Bangladesh
- Belgium
- Benin
- Bhutan
- Botswana
- Burkina Faso
- Burundi
- Canada
- Cape Verde
- Central African Republic
- Chad
- Comoros
- Denmark
- Finland
- France
- Gambia
- Germany
- Greece
- Guinea
- Haiti
- Ireland
- Israel
- Italy
- Japan
- Lesotho
- Liechtenstein
- Luxembourg
- Malawi
- Maldives
- Mali
- Nepal
- Netherlands
- Niger
- Norway
- Portugal
- Republic of Korea
- Rwanda
- Singapore
- Somalia
- Spain
- Sudan
- Sweden
- Switzerland
- Tanzania U.R.
- Uganda
- United Kingdom
- Western Samoa
- Yemen

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Alternate I (Apr. 1996). As prescribed in 225.408(a)(2), delete Singapore from the list of designated countries in paragraph (a)(3) of the basic clause.

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48 CFR Parts 231 and 242

[DFARS Case 94-D316]

Defense Federal Acquisition Regulation Supplement; Restructuring Costs Under Defense Contracts

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337) concerning the reimbursement of external restructuring costs associated with business combinations.

DATES: *Effective date:* April 18, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602-0131.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337). Section 818 restricts DoD from reimbursing external restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met.

An interim rule with request for comments was published at 60 FR 1747 on January 5, 1995. All comments received in response to the interim rule were considered in the development of the final rule. The final rule differs from the interim rule in that it (1) revises certain definitions at 231.205-70(b); (2) deletes the list of examples at 321.205-70(c)(3) and the requirement of a Memorandum of Understanding at 231.205-70(d)(3) and 242.1204(e); (3) amends 242.1204(e) to state that certain external restructuring costs are allowable under flexibly-priced novated contracts, provided restructuring will reduce overall costs to the National Aeronautics and Space Administration (NASA), in addition to DoD, where there is a mix of DoD and NASA contracts; and (4) makes editorial changes for clarification.

B. Regulatory Flexibility Act

The Department of Defense certifies that this final 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 most contracts awarded to small entities are awarded on a competitive fixed-price basis and cost principles, therefore, do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because this final rule does not impose any new reporting or recordkeeping requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 231 and 242

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 231 and 242 are amended as follows:

1. The authority citation for 48 CFR Parts 231 and 242 continues to read as follows:

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

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205-70 is revised to read as follows:

231.205-70 External restructuring costs.

(a) *Scope.* This subsection prescribes policies and procedures for allowing contractor external restructuring costs when net savings would result for DoD. This subsection also implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337).

(b) *Definitions.* As used in this subsection:

(1) *Business combination* means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) *External restructuring activities* means restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.

(3) *Restructuring activities* means nonroutine, nonrecurring, or extraordinary activities to combine

facilities, operations, or workforce, in order to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities do not include routine or ongoing repositionings and redeployments of a contractor's productive facilities or workforce (e.g., normal plant rearrangement of employee relocation), nor do they include other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).

(4) *Restructuring costs* means the costs, including both direct and indirect, of restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than \$2.5 million, the costs shall not be subject to the audit, review, and certification requirements of 231.205-70(c)(1); instead, the normal rules for determining cost allowability in accordance with FAR Part 31 shall apply.

(5) *Restructuring savings* means cost reductions, including both direct and indirect cost reductions, that result from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.* (1) Restructuring costs associated with external restructuring activities shall not be allowed unless—

(i) Such costs are allowable in accordance with FAR Part 31 and DFARS Part 231;

(ii) An audit of projected restructuring costs and restructuring savings is performed;

(iii) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, determines that overall reduced costs should result for DoD, and negotiates an advance agreement in accordance with 231.205-70(d)(8); and

(iv) A certification is made by the Under Secretary of Defense (Acquisition & Technology), his Principal Deputy or designee (in all cases, an individual appointed by the President and confirmed by the Senate), that

projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD.

(2) The audit, review, and certification required by 231.205-70(c)(1) shall not apply to any business combination for which payments for restructuring costs were made before August 15, 1994, or for which the cognizant ACO executed an advance agreement establishing cost ceilings based on audit/negotiation of detailed cost proposals for individual restructuring projects before August 15, 1994.

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall:

(1) Promptly execute a novation agreement, if one is required, in accordance with FAR subpart 42.12 and DFARS subpart 242.12 and include the provision at DFARS 242.1204(e).

(2) Direct the contractor to segregate restructuring costs and to suspend these amounts from any billings, final contract price settlements, and overhead settlements until the certification in paragraph (c)(1)(iv) of this subsection is obtained.

(3) Require the contractor to submit an overall plan of restructuring activities and an adequately supported proposal for planned restructuring projects. The proposal must include a breakout by year by cost element, showing the projected restructuring costs and projected restructuring savings.

(4) Notify major buying activities of contractor restructuring actions and inform them about any potential monetary impacts on major weapons programs, when known.

(5) Upon receipt of the contractor's proposal, as soon as practicable, adjust forward pricing rates to reflect the impact of projected restructuring savings. If restructuring costs are included in forward pricing rates prior to execution of an advance agreement in accordance with 231.205-70(d)(8), the contracting officer shall include a repricing clause in each fixed-price action that is priced based on the rates. The repricing clause must provide for a downward price adjustment to remove restructuring costs if the certification required by 231.205-70(c)(1)(iv) is not obtained.

(6) Upon receipt of the contractor's proposal, immediately request an audit review of the contractor's proposal.

(7) Upon receipt of the audit report, determine if restructuring savings will exceed restructuring costs on a present value basis.

(8) Negotiate an advance agreement with the contractor setting forth, at a minimum, a cumulative cost ceiling for restructuring projects and, when necessary, a cost amortization schedule. The cost may not exceed the amount of projected restructuring savings on a present value basis. The advance agreement shall not be executed until the certification required by 231.205-70(c)(1)(iv) is obtained.

(9) Submit to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), ATTN: OUSD(A&T)DP/CPF, a recommendation for certification of net benefit. Include the information described in 231.205-70(e).

(e) *Information needed to obtain certification of net benefit.* (1) The novation agreement (if one is required).

(2) The contractor's restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The cognizant ACO's recommendation for certification. This recommendation must clearly indicate that contractor projections of future cost savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for the Department.

PART 242—CONTRACT ADMINISTRATION

3. Section 242.1204 is amended by revising paragraph (e) to read as follows:

242.1204 Agreement to recognize a successor in interest (novation agreement).

(e) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 213.205-70, the cognizant contracting officer shall include the following provisions as paragraph (b)(7) of the novation agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(e):

“(7)(i) Except as set forth in subparagraph (7)(ii) below, the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them, for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to

the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under Part 31 of the Federal Acquisition Regulation (FAR) or Part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) may be reimbursed under flexibly-priced novated contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) (and to the National Aeronautics and Space Administration (NASA), where there is a mix of DoD and NASA contracts), and the requirements included in DFARS 231.205-70 are met. Restructuring costs shall not be allowed on novated contracts unless there is an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; and an Advance Agreement setting forth a cumulative cost ceiling for restructuring projects and the period to which such costs shall be assigned.”

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 960409108-6108-01; I.D. 040596A]

RIN 0648-XX61

American Lobster Fishery; Technical Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule to clarify enforcement of the regulations governing the American Lobster Fishery Management Plan (FMP). This rule clarifies that a prohibition on the removal of eggs from a lobster encompasses a ban on the landing or possession of lobsters that have come in contact with any substance capable of removing lobster eggs. This clarification of the regulations is necessary to ensure that the ban on removing lobster eggs can be effectively enforced.

EFFECTIVE DATE: April 15, 1996.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508-281-9273.

SUPPLEMENTARY INFORMATION: The regulations governing the American lobster fishery prohibit the retention or landing of berried lobsters (a lobster bearing eggs), removal of eggs from a