

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 252**

RIN 0750-AG60

**Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Balance of Payments Program Exemption for Construction Material (DFARS Case 2009-D041)**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the exemption from the Balance of Payments Program for construction material that is commercial information technology.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 9, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2009-D041, using any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009-D041 in the subject line of the message.

*Fax:* (703) 602-0350.

*Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060.

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**

DoD is proposing to amend the DFARS to implement in the clauses at 252.225-7044, Balance of Payments Program—Construction Material, and

252.225-7045, Balance of Payments Program—Construction Material under Trade Agreements, the exemption from the Balance of Payments Program for construction material that is commercial information technology. This exemption was added to the policy at DFARS 225.7501(a)(2)(vi) under FAR Case 2005-D011, to correspond to the exemption from the Buy American Act provided in annual appropriations acts since fiscal year 2004, because the Balance of Payments Program is an extension of the requirements of the Buy American Act to supplies or construction material to be used overseas. However, although the policy stated that it could apply to supplies or construction material, it was only implemented with regard to acquisition of supplies. This rule proposes to make the Balance of Payments Program construction clauses consistent with the stated policy.

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.*, because this rule does not impose economic burdens on contractors. The purpose and effect of this rule is to clarify the use of several terms. Therefore, DoD has not performed an initial regulatory flexibility analysis. 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 2009-D041) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 104-13) does not apply because the proposed rule contains no information collection requirements.

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR part 252 as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

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

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

2. Amend section 252.225-7044 by revising the clause date, redesignating paragraph (b)(2) as paragraph (b)(3), and adding new paragraph (b)(2) to read as follows:

252.225-7044 Balance of Payments Program—Construction Material.

\* \* \* \* \*

**BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL (DATE)**

\* \* \* \* \*

(b) \* \* \*

(2) Information technology that is a commercial item; or

\* \* \* \* \*

3. Amend section 252.225-7045 by revising the clause date; redesignating paragraph (c)(2) as paragraph (c)(3); adding new paragraph (c)(2); revising the date of ALTERNATE I; redesignating paragraph (c)(2) of ALTERNATE I as paragraph (c)(3); and adding new paragraph (c)(2) to ALTERNATE I to read 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 (DATE)**

\* \* \* \* \*

(c) \* \* \*

(2) Information technology that is a commercial item; or

\* \* \* \* \*

ALTERNATE I (DATE). \* \* \*

\* \* \* \* \*

(c) \* \* \*

(2) Information technology that is a commercial item; or

\* \* \* \* \*

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