

I. Background

DoD published an interim rule in the **Federal Register** at 79 FR 44314 on July 31, 2014, to implement sections of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014, that restricts use of military construction funds in various countries, including countries bordering the Arabian Sea. Since 1997, sections 111 and 112 of the annual military construction appropriations acts restrict use of military construction funds for acquisitions exceeding certain dollar thresholds of architect-engineer services and military construction to be performed in certain countries. With some exceptions, these restrictions require award to a U.S. firm or provide a preference for award to a U.S. firm.

One respondent submitted a public comment in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. The comment did not result in any changes in the final rule. A discussion of the comment is provided, as follows:

Comment: The respondent disagreed with the substitution of “Arabian Sea” for the “Arabian Gulf” for the following reasons:

- The respondent viewed the rule as a “degradation of the intent of the law.”
- The respondent viewed the rule as harmful to all U.S. businesses, small and large, interested in construction projects in countries that border the Arabian Gulf, due to loss of the 20 percent preference.

The respondent suggested extension of the preferences for U.S. businesses when awarding military construction or architect-engineer contracts in countries bordering the Arabian Gulf to contracts in countries bordering the Arabian Sea.

Response: The interim rule was issued in order to comply with the law. For several years, the restrictions in the annual military construction appropriations acts have applied the use of military construction funds in countries bordering the Arabian Sea, not the Arabian Gulf. The law does not provide the option to provide the 20 percent preference to U.S. firms performing construction projects in countries that border the Arabian Gulf.

III. 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, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule is necessary to implement the preference for award only to U.S. firms when awarding certain military construction and architect-engineer contracts to be performed in countries bordering the Arabian Sea.

The objective of this rule is to implement sections 111 and 112 of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113–76). This rule revises the preference for award to U.S. firms of military construction contracts that have an estimated value greater than \$1,000,000 and the restriction requiring award only to U.S. firms for architect-engineer contracts that have an estimated value greater than \$500,000, to make it applicable to contracts to be performed in a country bordering the Arabian Sea, rather than a country bordering the Arabian Gulf (as required in earlier statutes).

One respondent stated that the rule would cause harm to U.S. small business entities engaged in construction projects in countries bordering the Arabian Gulf, due to loss of the 20 percent preference. There was no change made to the rule as the result of this comment, because the law no longer provides a preference for U.S. businesses (small or large) performing construction projects in countries bordering the Arabian Gulf. The law changed the applicability of the preference from military construction projects in countries bordering the Arabian Gulf to military construction projects bordering the Arabian Sea.

This will only apply to a very limited number of small entities—those entities that submit offers in response to solicitations for military construction contracts that have an estimated value greater than \$1,000,000 and architect-engineer contracts that have an estimated value greater than \$500,000,

when the contracts are to be performed in countries bordering the Arabian Sea.

There is a requirement for offerors to indicate in their offer whether they are a U.S. firm.

This rule does not impose any significant economic impact on small firms. The offeror must represent if it is a U.S. firm, but in return is granted a preference. DoD did not identify any alternatives that could reduce the burden and still meet the objectives of the rule.

V. Paperwork Reduction Act

The rule does not impose any new 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). However, it modifies the prescription for use of the provision at DFARS 252.236–7010, Overseas Military Construction—Preference for United States Firms, currently approved under OMB Clearance 0704–0255, Defense Federal Acquisition Regulation Supplement (DFARS) Part 236, Construction and Architect-Engineer Contracts, an amount of less than 8 hours. Any change in the burden hours due to the changed prescription is negligible.

List of Subjects in 48 CFR Parts 225 and 236

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR part 225 and 236, which was published at 79 FR 44314 on July 31, 2014, is adopted as a final rule without change.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–A147

Defense Federal Acquisition Regulation Supplement: Elimination of Quarterly Reporting of Actual Performance Outside the United States (DFARS Case 2015–D001)

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 eliminate the requirement for quarterly reporting of actual contract performance outside the United States.

DATES: Effective December 11, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

As part of a DFARS streamlining initiative, DoD is eliminating the requirement for quarterly reporting of actual contract performance outside the United States (DFARS 252.225-7006, Quarterly Reporting of Actual Contract Performance Outside the United States) and associated text in DFARS subpart 225.72. This report is not required by statute.

DoD is retaining the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, and the clause at 252.225-7004, Report of Intended Performance Outside the United States and Canada—Submission After Award, both of which are required by 10 U.S.C. 2410g.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this rule just eliminates obsolete text.

III. 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, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

This rule slightly reduces the information collection requirements currently approved under OMB Control Number 0704-0229, titled Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, Foreign Acquisition, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Removing the requirement for the DFARS 252.225-7006 quarterly reports reduced the burden hours approved by OMB in 0704-0229 by 225 hours, from 64,256 hours to 64,031 hours. An OMB Form 83-C Change Request has been processed by OMB to reduce the burden accordingly.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Manuel Quinones,

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. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Revise section 225.7201 to read as follows:

225.7201 Policy.

10 U.S.C. 2410g requires offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada when the contract could be performed inside the United States or Canada.

225.7204 [Amended]

■ 3. Amend section 225.7204 by—

■ a. In paragraph (a), adding the word “and” after the semicolon;

■ b. In paragraph (b), removing the semicolon and adding a period; and
■ c. Removing paragraph (c).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7006 [Removed and Reserved]

■ 4. Remove and reserve 252.225-7005.

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DEPARTMENT OF DEFENSE

48 CFR Parts 235, 237, and 252

RIN 0750-AI22

Defense Federal Acquisition Regulation Supplement: Animal Welfare (DFARS Case 2013-D038)

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 comply with the Department of Defense Instruction that addresses the use of animals in DoD programs.

DATES: Effective December 11, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Janetta Brewer, telephone 571-372-6104.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 79 FR 35717 on June 24, 2014, to revise DFARS 235.072, subpart 237.1, and the clause at 252.235-7002, Animal Welfare, to be consistent with the Department of Defense Instruction (DoDI) 3216.01 entitled “Use of Animals in DoD Programs,” which governs DoD supported research, development, test, and evaluation or training that uses vertebrate animals, and the acquisition of animals. One respondent submitted two comments on the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule, and one change was made. A discussion of the comments is provided below.

Comment: The respondent recommended that DFARS section 237.17X be revised to prescribe use of the clause at 252.235-7002.

Response: The clause at 252.235-7002, Animal Welfare, is prescribed