

(Billing Code 5001-08-P)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750-AG80

**Defense Federal Acquisition Regulation Supplement;
Foreign Participation in Acquisitions in Support of
Operations in Afghanistan (DFARS Case 2009-D012)**

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement—

- Waiver of section 302(a) of the Trade Agreements Act of 1979, as amended, which prohibits acquisitions of products or services from nondesignated countries, in order to allow acquisition from the nine South Caucasus/Central and South Asian (SC/CASA) states; and
- Determination of inapplicability of the Balance of Payments Program evaluation factor to offers of products (other than arms, ammunition, or war materials) from the SC/CASA states to support operations in Afghanistan.

DATES: *Effective Date:* [Insert date of publication in the FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 703-602-0328; facsimile 703-602-0350. Please cite DFARS Case 2009-D012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a proposed rule on January 6, 2010 (75 FR 832) to implement—

- A waiver of the procurement prohibition of section 302(a) of the Trade Agreements Act of 1979 with regard to acquisitions by DoD or GSA, on behalf of DoD, in support of operations in Afghanistan from the following nine South Caucasus/Central and South Asian (SC/CASA) states: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan; and
- A determination by the Deputy Secretary of Defense that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program to offers of products (other than arms, ammunition, or war materials) and construction materials

from these SC/CASA states acquired in direct support of operations in Afghanistan.

In addition, the proposed rule made corrections to—

- Alternate I of 252.225-7035, to delete the phrase “Australian or” from paragraph (c)(2)(i); and
- Alternate I of 252.225-7045, to add in paragraph (b), line 4, that the Bahrain Free Trade Agreement does not apply.

DoD did not receive any comments on the proposed rule.

Therefore, DoD is finalizing the proposed rule with no substantive change. The final rule does incorporate the following editorial and technical corrections:

- Incorporates the current DFARS baseline.
- Amends various clause prefaces to reference the correct clause prescriptions.
- Amends 225.1101(6)(i) to reference the World Trade Organization Government Procurement Agreement rather than the Trade Agreements Act, in conformance with FAR 225.1101(c)(1).
- Amends paragraph (d), added by Alternate II to the clause at 252.225-7021, to limit applicability. Only contractors from an SC/CASA state are required to notify the government of the SC/CASA state with regard to the benefit of providing reciprocal procurement opportunities to U.S. products and services, in

conformance with the requirement imposed by the United States Trade Representative.

- Corrects the provision and clause at 252.225-7035 and 252.225-7036, so that Peruvian end products are not erroneously treated as eligible products in acquisitions that do not exceed the WTO GPA threshold (see DFARS Case 2008-D046, published at 74 FR 37650 and 75 FR 3179 for initial implementation of the Peruvian Free Trade Agreement). The threshold for end products for the Peruvian Free Trade Agreement, like the Free Trade Agreements of Bahrain and Morocco, is equal to the threshold of the WTO GPA. Therefore, these trade agreements are only in effect for acquisitions that exceed the WTO GPA threshold (covered by DFARS provision and clause 252.225-7020 and 252.225-7021). This is a technical amendment to this DFARS provision and clause in order to conform to the trade threshold for the Peruvian Free Trade Agreement that is at FAR 25.402(b) and to be consistent with the corresponding FAR provision and clause at 52.225-3 and 52.225-4.

This is not a significant regulatory action and, therefore, was not subject to review by the Office of Management and Budget under Executive Order 12866, dated

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

B. Regulatory Flexibility Act.

DoD certifies that 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 this rule only impacts acquisitions that are in support of operations in Afghanistan, allowing acquisition of products and services from the SC/CASA states. The minimal information collection requirement applies only to contractors that are from an SC/CASA state, and does not apply to U.S. small business concerns. DoD did not receive any comments from small businesses or other interested parties.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule modifies information collection requirements that have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* However, the impact on existing approved information collection requirements (OMB clearance 0704-0229) is expected to be negligible.

In addition, this final rule contains a new information collection requirement that has received approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* (OMB Clearance Number 0704-04ZZ). DoD did not receive

any comments on the proposed information collection requirement.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.