



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS-2015-0066]

RIN 0750-AI79

Defense Federal Acquisition Regulation Supplement: Trade Agreements Thresholds (DFARS Case 2016-D003)

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 incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: Effective: January 1, 2016.

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

SUPPLEMENTARY INFORMATION:

I. Background

Every two years, the trade agreements thresholds are escalated according to a predetermined formula set forth in the

agreements. The United States Trade Representative has specified the following new thresholds in the Federal Register (80 FR 77694, December 15, 2015):

Trade Agreement	Supply Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	191,000	7,358,000
FTAs		
Australia FTA	77,533	7,358,000
Bahrain FTA	191,000	10,079,365
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,533	7,358,000
Chile FTA	77,533	7,358,000
Colombia FTA	77,533	7,358,000
Korea FTA	100,000	7,358,000
Morocco FTA	191,000	7,358,000
NAFTA		
–Canada	25,000	10,079,365
–Mexico	77,533	10,079,365
Panama FTA	191,000	7,358,000
Peru FTA	191,000	7,358,000
Singapore FTA	77,533	7,358,000

II. Discussion and Analysis

This final rule implements the new thresholds in DFARS part 225, Foreign Contracting, for sections that include trade

agreements thresholds (i.e., 225.1101, 225.7017-3, 225.7017-4, and 225.7503). Additionally, the rule updates clauses 252.225-7017, Photovoltaic Devices, and 252.225-7018, Photovoltaic Devices—Certificate, with conforming changes. A minor technical amendment corrects cross references at 225.1101(10)(i) and paragraphs (b)(1)(i) and (ii) of the clause at 252.225-7018.

III. Publication of this final rule for public comment is not required by statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. entitled "Publication of Proposed Regulations." 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 it only adjusts the thresholds according to predetermined formulae to adjust for changes in economic conditions, thus maintaining the status quo, without significant effect beyond the internal operating procedures of the Government.

IV. 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.

V. Regulatory Flexibility Act

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

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C chapter 35) does apply, because the final rule affects the prescriptions for use of the certification and information collection requirements in the provision at DFARS 252.225-7035 and the certification and information collection requirements in the provision at DFARS

252.225-7018 (both currently approved under OMB Control #0704-0229), Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition and Related Clauses. However, there is no impact on the estimated burden hours, because the threshold changes are in line with inflation and maintain the status quo.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer L. Hawes

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 CFR chapter 1.

PART 225—FOREIGN CONTRACTING

225.1101 [Amended]

2. Amend section 225.1101—
 - a. In paragraph (6) introductory text, by removing "\$204,000" and adding "\$191,000" in its place;
 - b. In paragraph (10)(i) introductory text, by removing "\$204,000" and adding "\$191,000" in its place, and removing "at 25.401 applies" and adding "at FAR 25.401 or 225.401 applies" in its place;

- c. In paragraphs (10)(i)(A), by removing "\$204,000" and adding "\$191,000" in its place;
- d. In paragraph (10)(i)(B), by removing "\$79,507" and adding "\$77,533" in its place;
- e. In paragraph (10)(i)(C), by removing "\$204,000" and adding "\$191,000" in its place; and
- f. In paragraphs (10)(i)(D) through (F), by removing "\$79,507" wherever it appears and adding "\$77,533" in its place.

225.7017-3 [Amended]

- 3. Amend section 225.7017-3 in paragraph (b) by removing "\$204,000" and adding "\$191,000" in its place.

225.7017-4 [Amended]

- 4. Amend section 225.7017-4 in paragraphs (a)(1) and (b)(1) by removing "\$204,000" and adding "\$191,000" in both places.

225.7503 [Amended]

- 5. Amend section 225.7503—
 - a. In paragraphs (a) and (b) introductory text, by removing "\$7,864,000" and adding "\$7,358,000" in both places;
 - b. In paragraph (b)(1), by removing "\$10,335,931" and adding "\$10,079,365" in its place;
 - c. In paragraph (b)(2), by removing "\$7,864,000" and adding "\$7,358,000" in its place, and removing "\$10,335,931" and adding "\$10,079,365" in its place;

- d. In paragraph (b) (3) by removing, "\$10,335,931" and adding "\$10,079,365" in its place; and
- e. In paragraph (b) (4), by removing "\$7,864,000" and adding "\$7,358,000" in its place, and removing "\$10,335,931" and adding "\$10,079,365" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7017 [Amended]

- 6. Amend section 252.225-7017—
 - a. By removing clause date "(NOV 2015)" and adding "(JAN 2016)" in its place;
 - b. In paragraphs (c) (2) and (3), by removing "\$79,507" and adding "\$77,533" in its place; and
 - c. In paragraphs (c) (4) and (5), by removing "\$204,000" and adding "\$191,000" in its place.

252.225-7018 [Amended]

- 7. Amend section 252.225-7018—
 - a. By removing clause date "(NOV 2015)" and adding "(JAN 2016)" in its place;
 - b. In paragraph (b) (1) introductory text, by removing "\$204,000" and adding "\$191,000" in its place;
 - c. In paragraph (b) (1) (i), by removing "DFARS 225.217-4(b)" and adding "DFARS 225.7017-4(b)" in its place;
 - d. In paragraph (b) (1) (ii), by removing "DFARS 225.217-4(a)" and adding "DFARS 225.7017-4(a)" in its place;

e. In paragraph (b) (2), by removing "\$204,000" and adding "\$191,000" in its place;

f. In paragraphs (d) (3) and (4) introductory text, by removing "\$79,507" and adding "\$77,533" in both places; and

g. In paragraphs (d) (5) and (6) introductory text, by removing "\$204,000" and adding "\$191,000" in both places.

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