

as appropriate, security accreditation and a need-to-know; and

(2) Nongovernmental U.S. entities registered with the Department of State and eligible to export defense articles under U.S. law and regulation, including their employees, with, as appropriate, security accreditation and a need-to-know.

U.S. DoD Treaty-eligible requirements means any defense article acquired by DoD for use in a combined military or counterterrorism operation, cooperative research, development, production, or support program, or DoD end use, as described in Article 3 of the Treaty and Sections 2 and 3 of the Implementing Arrangement.

(b) All contract line items in this contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles exempt from Treaty eligibility will be identified in those contract line items that are otherwise Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

[Enter Contract Line Item Number(s) or enter "None"]

(c) Subject to the other terms and conditions of this contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the Treaty for exports or transfers of qualifying defense articles in performance of the contract.

(d) Any conduct by the Contractor that falls outside the scope of the Treaty, the Implementing Arrangement, and 22 CFR 126.17(g) is subject to all applicable ITAR requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR Parts 447, 478, and 479, which are unaffected by the Treaty.

(e) If the Contractor is an Approved Community member, the Contractor agrees that—

(1) The Contractor shall comply with the requirements of the Treaty, the Implementing Arrangement, the ITAR, and corresponding regulations of the U.S. Government and the government of the United Kingdom; and

(2) Prior to the export or transfer of a qualifying defense article, the Contractor—

(i) Shall mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in accordance with the Treaty, the Implementing Arrangement, and corresponding United States Government and the government of the United Kingdom regulations including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Shall comply with the re-transfer or re-export provisions of the Treaty, this

Implementing Arrangement, and corresponding United States Government and the government of the United Kingdom regulations, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Shall acknowledge that any conduct that falls outside or in violation of the Treaty, Implementing Arrangement, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of the United Kingdom and the United States Government, including any criminal, civil, and administrative penalties or sanctions contained therein.

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may require exports or transfers of qualifying defense articles in connection with deliveries under the contract.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750-AH68

Defense Federal Acquisition Regulation Supplement: Report on Waiver of Prohibition on Acquisition From Communist Chinese Military Companies (DFARS Case 2012-D023)

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 implement the requirement in the National Defense Authorization Act for Fiscal Year 2012 to report to the congressional defense committees before issuing a waiver of the prohibition on acquisition of United States Munitions List items from Communist Chinese military companies.

DATES: *Effective Date:* May 22, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6106; facsimile 571-372-6094.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) requires a report to the congressional defense committees not less than 15 days before issuing a waiver to the requirements of section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), implemented at DFARS 225.770, Prohibition on acquisition of United States Munitions List items from Communist Chinese military companies. The prior requirement was for a report within 30 days after the date of the waiver. The final rule also adds the requirement to send a copy of the report to Defense Procurement and Acquisition Policy.

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 the rule merely alters the timing of the report to the congressional defense committees when issuing a waiver of the prohibition on acquisition of United States Munitions List items from Communist Chinese military companies, adds the requirement to send a copy of the report to Defense Procurement and Acquisition Policy, and further specifies the required contents of the report. These requirements affect only the internal operating procedures of the Government.

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 final rule does not contain any 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).

List of Subjects in 48 CFR Part 225

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

225.770 [Amended]

■ 2. Section 225.770 is amended in the first sentence to remove “Section 1211” and add “section 1211” in its place and add “and section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81)” at the end of the sentence.

■ 3. Section 225.770-5 is amended by revising paragraph (c) to read as follows:

225.770-5 Waiver of prohibition.

* * * * *

(c)(1) The official granting a waiver shall submit a report to the congressional defense committees, with a copy to the Director of Defense Procurement and Acquisition Policy (see PGI 225.770-5), not less than 15 days before issuing the waiver.

(2) In the report, the official shall—
(i) Identify the specific reasons for the waiver; and

(ii) Include recommendations as to what actions may be taken to develop

alternative sourcing capabilities in the future.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 204

RIN 0750-AH71

Defense Federal Acquisition Regulation Supplement: Contingency Contract Closeout (DFARS Case 2012-D014)

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 require additional planning, monitoring, and executing activities for contract closeouts when the contracts are awarded for performance in contingency areas.

DATES: *Effective Date:* May 22, 2012.

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, telephone 571-372-6098.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a recommendation made by the Government Accountability Office (GAO) report 11-891, “CONTINGENCY CONTRACTING: Improved Planning and Management Oversight Needed to Address Challenges with Closing Contracts,” dated August 23, 2011. The GAO recommended that DoD improve contract closeouts when the contracts are awarded for performance in contingency areas. The GAO recommended revising contract guidance to enhance advance planning for contingency contract closeouts. Additionally, the GAO advocated including a requirement that senior contracting officials monitor and assess the progress of contract closeout activities throughout the contingency operation.

The DFARS is amended at 204.804 to implement key elements proposed by the GAO. The head of the contracting activity is required to assign the highest priority to contracts performed in a contingency area in order to reduce

potential backlogs. Heads of contracting activities are responsible for supervising the progress of contingency contract closeout activities and taking appropriate steps if a backlog occurs.

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 amendment does not relate to the expenditure of appropriated funds, and has neither a significant effect beyond the internal operating procedures of DoD, or a significant cost or administrative impact on contractors or offerors. These requirements affect only the internal operating procedures of the Government.

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.