

an end item to be delivered to the Government under this contract.

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■ 10. Amend section 252.225–7052 by—

- a. Removing the clause date “(APR 2019)” and adding “(DEC 2019)” in its place;
- b. In paragraph (a), redesignating the definitions of “Covered country” and “Covered material” in alphabetical order, and adding the definitions, in alphabetical order, of “Assembly”, “Commercially available off-the-shelf item”, “Component”, “Electronic device”, “End item”, “Subsystem”, and “Tungsten heavy alloy”;
- c. Redesignating paragraphs (b)(2)(i) and (ii) as (b)(2)(A) and (B);
- d. Redesignating paragraph (b)(2) introductory text as (b)(2)(i);
- e. Redesignating paragraph (b)(3) as paragraph (b)(2)(ii);
- f. Adding a new paragraph (b)(3);
- g. In paragraph (c)(1)(i)(B), removing “had” and adding “has” in its place;
- h. Revising paragraph (c)(2); and
- i. Adding a new paragraph (d).

The additions and revision read as follows:

252.225–7052 Restriction on the Acquisition of Certain Magnets and Tungsten.

* * * * *

(a) * * *

Assembly means an item forming a portion of a system or subsystem that—

- (1) Can be provisioned and replaced as an entity; and
- (2) Incorporates multiple, replaceable parts.

Commercially available off-the-shelf item—

- (1) Means any item of supply that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under this contract or a subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means any item supplied to the Government as part of an end item or of another component.

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Electronic device means an item that operates by controlling the flow of

electrons or other electrically charged particles in circuits, using interconnections such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.

End item means the final production product when assembled or completed and ready for delivery under a line item of this contract.

Subsystem means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

Tungsten heavy alloy means a tungsten base pseudo alloy that—

- (1) Meets the specifications of ASTM B777 or SAE-AMS-T-21014 for a particular class of tungsten heavy alloy; or

- (2) Contains at least 90 percent tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has density of at least 16.5 g/cm³.

(b) * * *

- (3) For production of tungsten metal powder and tungsten heavy alloy, this restriction includes—

- (i) Atomization;
- (ii) Calcination and reduction into powder;

- (iii) Final consolidation of non-melt derived metal powders; and

- (iv) All subsequent phases of production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

(c) * * *

- (2) If the authorized agency official concerned has made a nonavailability determination, in accordance with section 225.7018–4 of the Defense Federal Acquisition Regulation Supplement, that compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

- (i) For tungsten heavy alloy, the term “required form” refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

- (ii) For samarium-cobalt magnets or neodymium-iron-boron magnets, the term “required form” refers to the form and properties of the magnets.

- (d) The Contractor shall insert the substance of this clause, including this

paragraph (d), in subcontracts and other contractual instruments that are for items containing a covered material, including subcontracts and other contractual instruments for commercial items, unless an exception in paragraph (c) of this clause applies. The Contractor shall not alter this clause other than to identify the appropriate parties.

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[FR Doc. 2019–27825 Filed 12–30–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS–2019–0069]

RIN 0750–AK75

Defense Federal Acquisition Regulation Supplement: Trade Agreements Thresholds (DFARS Case 2019–D035)

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 revised 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, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

This rule adjusts thresholds for application of the World Trade Organization (WTO) Government Procurement Agreement (GPA) and Free Trade Agreements (FTA) as determined by the United States Trade Representative (USTR). The trade agreements thresholds are adjusted every two years according to predetermined formulae set forth in the agreements. The USTR has specified the following new thresholds (84 FR 70615, December 23, 2019):

| Trade agreement | Supply contract (equal to or exceeding) | Construction contract (equal to or exceeding) |
|--|---|--|
| WTO GPA | \$182,000 | \$7,008,000 |
| FTAs: | | |
| Australia FTA | 83,099 | 7,008,000 |
| Bahrain FTA | 182,000 | 10,802,884 |
| CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) | 83,099 | 7,088,000 |
| Chile FTA | 83,099 | 7,088,000 |
| Columbia | 83,099 | 7,088,000 |
| Korea | 100,000 | 7,008,000 |
| Morocco FTA | 182,000 | 7,008,000 |
| NAFTA: | | |
| —Canada | 83,099 | 10,802,884 |
| —Mexico | 83,099 | 10,802,884 |
| Panama FTA | 182,000 | 7,008,000 |
| Peru FTA | 182,000 | 7,008,000 |
| Singapore FTA | 83,099 | 7,008,000 |

II. 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. 1707 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 does not constitute a significant DFARS revision within the meaning of FAR 1.501–1 and does not have a significant cost or administrative impact on contractors or offerors. This final rule only adjusts the trade agreements 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.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the DFARS to revise thresholds for application of the WTO GPA and the FTA. The revisions do not add any new burdens or impact applicability of clauses and provisions at or below the simplified acquisition threshold, or to commercial items.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review, 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. The Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. 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 and does not require publication for public comment.

VII. 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, Buy American—Free Trade Agreements-

Balance of Payments Program Certificate, and the certification and information collection requirements in the provision at DFARS 252.225–7018, Photovoltaic Devices—Certificate. The changes to these DFARS clauses do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0229, entitled “DFARS Part 225, Foreign Acquisition and related clauses,” 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 Lee Hawes,
Regulatory Control Officer, 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

225.1101 [Amended]

- 2. Amend section 225.1101 by—
- a. In paragraph (6) introductory text, removing “\$180,000” and adding “\$182,000” in its place;
- b. In paragraph (10)(i) introductory text, removing “\$180,000” and adding “\$182,000” in its place;
- c. In paragraph (10)(i)(A), removing “\$180,000” and adding “\$182,000” in its place;
- d. In paragraph (10)(i)(B), removing “\$80,317” and adding “\$83,099” in its place;

- e. In paragraph (10)(i)(C), removing “\$180,000” and adding “\$182,000” in its place; and
- f. In paragraphs (10)(i)(D) through (F), removing “\$80,317” wherever it appears and adding “\$83,099” in its place.

225.7017–3 [Amended]

- 3. Amend section 225.7017–3, in paragraph (b), by removing “\$180,000” and adding “\$182,000” in its place.

225.7503 [Amended]

- 4. Amend section 225.7503 by—
 - a. In paragraphs (a) and (b) introductory text, removing “\$6,932,000” and adding “\$7,008,000” in both places;
 - b. In paragraph (b)(1), removing “\$10,441,216” and adding “\$10,802,884” in its place;
 - c. In paragraph (b)(2), removing “\$6,932,000” and adding “\$7,008,000” in its place, and removing “\$10,441,216” and adding “\$10,802,884” in its place;
 - d. In paragraph (b)(3), removing “\$10,441,216” and adding “\$10,802,884” in its place; and
 - e. In paragraph (b)(4), removing “\$6,932,000” and adding “\$7,008,000” in its place, and removing “\$10,441,216” and adding “\$10,802,884” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.225–7017 [Amended]**

- 5. Amend section 252.225–7017 by—
 - a. Removing clause date “(AUG 2019)” and adding “(JAN 2020)” in its place;
 - b. In paragraphs (c)(2) and (3), removing “\$80,317” and adding “\$83,099” in its place; and
 - c. In paragraphs (c)(4) and (5), removing “\$180,000” and adding “\$182,000” in its place.

252.225–7018 [Amended]

- 6. Amend section 252.225–7018 by—
 - a. Removing clause date “(DEC 2018)” and adding “(JAN 2020)” in its place;
 - b. In paragraph (b)(1) introductory text, removing “\$180,000” and adding “\$182,000” in its place;
 - c. In paragraph (b)(2), removing “\$180,000” and adding “\$182,000” in its place;
 - d. In paragraphs (d)(3) and (4) introductory text, removing “\$80,317” and adding “\$83,099” in both places; and
 - e. In paragraphs (d)(5) and (6) introductory text, removing “\$180,000” and adding “\$182,000” in both places.

[FR Doc. 2019–27828 Filed 12–30–19; 8:45 am]

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 244**

[Docket DARS–2019–0024]

RIN 0750–AJ48

Defense Federal Acquisition Regulation Supplement: Contractor Purchasing System Review Threshold (DFARS Case 2017–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 establish a DoD contractor purchasing system review dollar threshold that provides a regulatory basis for allowing DoD personnel to support other essential priorities and missions of greater contractual risk, while reducing regulatory impact on contractors.

DATES: Effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Kimberly Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD published a proposed rule in the *Federal Register* at 84 FR 25228 on May 31, 2019, proposing to amend the DFARS to implement a recommendation from the Defense Contract Management Agency (DCMA) to raise the contractor purchasing system review (CPSR) threshold at Federal Acquisition Regulation (FAR) 44.302(a) from \$25 million to \$50 million. Currently, FAR 44.302(a) requires the administrative contracting officer (ACO) to determine whether a contractor’s sales to the Government are expected to exceed \$25 million during the next 12 months and, if so, perform a review to determine if a CPSR is needed. The ACO uses this dollar threshold in conjunction with the surveillance criteria cited at FAR 44.302(a), *i.e.*, contractor past performance, and the volume, complexity, and dollar value of subcontracts, to make this determination. DCMA performs the preponderance of DoD CPSRs. Competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to part 12 of the FAR are excluded from this requirement.

FAR 44.302(a) specifically authorizes the head of the agency responsible for contract administration to raise or lower the \$25 million CPSR threshold if it is considered to be in the Government’s best interest. The dollar threshold of \$25 million cited at FAR 44.302(a) has been unchanged since 1996. In 2016, the DCMA CPSR Group conducted an analysis to determine if raising the CPSR threshold would be beneficial. Based on the Group’s findings, it was determined that adjusting the threshold upward to \$50 million would appropriately account for inflation, reduce burden on small contractors, and allow a more efficient and effective use of CPSR resources to review larger contractors where more taxpayer dollars are at risk. Three respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule.

A. Summary of Significant Changes From the Proposed Rule

There are no changes made to the final rule as a result of the public comments.

B. Analysis of Public Comments**1. Support for the Rule**

Comment: Two respondents conveyed overall support for the rule, but one respondent stated the support for the rule was contingent on DoD ensuring procurements valued at \$50 million or below will not require the contractor to have or maintain an approved purchasing system per the clause at DFARS 252.242–7005, Contractor Business Systems.

Response: FAR clause 52.244–2, Subcontracts, allows the contracting officer to assess whether a system review is needed (*e.g.*, when meeting the \$50 million threshold is anticipated). DFARS 252.244–7001, Contractor Purchasing System Administration, establishes the review criteria. Contractors whose sales have not reached the \$50 million threshold may opt to allow their approval to expire rather than incur the costs to maintain a system that meets the criteria for an approved system. If an approved purchasing system is necessary to support a particular program, the contractor can work with the contracting officer to obtain a purchasing system review based on risk or pressing need. Otherwise, the contractor can request consent to subcontract in accordance with FAR 52.244–2.