

## RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (AUG 1998)

\* \* \* \* \*

(c)(1) The restriction in paragraph (b) of this clause does not apply to the extent that—

(i) The end items or components containing ball or roller bearings are commercial items; or

(ii) The ball or roller bearings are commercial items manufactured in the United Kingdom.

\* \* \* \* \*

14. Section 252.225-7029 is revised to read as follows:

**252.225-7029 Preference for United States or Canadian Air Circuit Breakers.**

As prescribed in 225.7016-4, use the following clause:

## PREFERENCE FOR UNITED STATES OR CANADIAN AIR CIRCUIT BREAKERS (AUG 1998)

(a) Unless otherwise specified in its offer, the Contractor agrees that air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States, Canada, or the United Kingdom.

(b) Unless an exception applies under Defense Federal Acquisition Regulation Supplement (DFARS) 225.7016-2 or a waiver is granted under DFARS 225.7005(a) (1) or (2), preference will be given to air circuit breakers manufactured in the United States or Canada by adding 50 percent for evaluation purposes to the offered price of all other air circuit breakers, except those manufactured in the United Kingdom.

(End of clause)

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## DEPARTMENT OF DEFENSE

## 48 CFR Parts 225 and 253

[DFARS Case 98-D015]

## Defense Federal Acquisition Regulation Supplement; Letter of Offer and Acceptance

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove references to an obsolete form pertaining to offer and acceptance of foreign military sales (FMS) agreements, and to make other editorial changes pertaining to FMS acquisitions.

**EFFECTIVE DATE:** August 17, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

Telephone (703) 602-0131; telefax (703) 602-0350. Please cite DFARS Case 98-D015.

## SUPPLEMENTARY INFORMATION:

**A. Background**

This final rule amends DFARS Subpart 225.73 and Part 253 to remove references to DD Form 1513, United States Department of Defense Offer and Acceptance, which is no longer used to document FMS agreements. Such agreements are documented in a Letter of Offer and Acceptance.

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98-D015.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 225 and 253**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 225 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 253 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 225—FOREIGN ACQUISITION**

2. Section 225.7300 is revised to read as follows:

**225.7300 Scope of subpart.**

(a) This subpart contains policies and procedures for acquisitions for foreign military sales (FMS) under the Arms Export Control Act (22 U.S.C. Chapter 39). Section 22 of the Arms Export Control Act (22 U.S.C. 2762) authorizes DoD to enter into contracts for resale to foreign countries or international organizations.

(b) This subpart does not apply to—

(1) FMS made from inventories or stocks;

(2) Acquisitions for replenishment of inventories or stocks; or

(3) Acquisitions made under DoD cooperative logistic supply support arrangements.

3. Section 225.7301 is amended by revising paragraph (a) introductory text to read as follows:

**225.7301 General.**

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through FMS agreements. The agreement is documented in a Letter of Offer and Acceptance (LOA) (see DoD 5105.38-M, Security Assistance Management Manual). The LOA—

\* \* \* \* \*

**225.7302 [Amended]**

4. Section 225.7302 is amended in the introductory text, in paragraph (a)(1), and in paragraph (b) introductory text by removing “DoD Offer and Acceptance” and inserting in its place “LOA”; and in paragraph (b)(1) by removing “DD Form 1513” and inserting in its place “LOA”.

**225.7303 Pricing acquisitions for FMS.**

5. The heading of section 225.7303 is revised to read as set forth above.

6. Section 225.7303-2 is amended in paragraph (a)(3)(i) by removing “foreign military sale Letter of Offer and Acceptance” and inserting in its place “LOA”; in paragraph (b) by removing “foreign military sale” and inserting in its place “FMS”; and by revising paragraph (c) introductory text and paragraph (d) to read as follows:

**225.7303-2 Cost of doing business with a foreign government or an international organization.**

\* \* \* \* \*

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for FMS. Therefore, the cost limitations on independent research and development and bid and proposal (IR&D/B&P) costs in FAR 31.205-18 do not apply to such contracts, except as provided in 225.7303-5. The allowability of IR&D/B&P costs on contracts for FMS not wholly paid for from funds made available on a nonrepayable basis shall be limited to the contract’s allocable share of the contractor’s total IR&D/B&P expenditures. In pricing contracts for such FMS—

\* \* \* \* \*

(d) Under paragraph (e)(1)(A) of Section 21 of the Arms Export Control Act (22 U.S.C. 2761), the United States must charge for administrative services to recover the estimated cost of administration of sales made under the Army Export Control Act.

7. Section 225.7303-4 is amended by revising paragraph (b)(1) to read as follows:

**225.7303-4 Contingent fees.**

\* \* \* \* \*

(b)(1) Under DoD 5105.38-M, LOAs for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contacts resulting from the LOAs prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the payments have been identified and approved in writing by the foreign customer before contract award (see 225.7308(a)).

\* \* \* \* \*

**225.7303-5 [Amended]**

8. Section 225.7303-5 is amended in paragraph (a) by removing "foreign military sales" and inserting in its place "FMS"; and in paragraph (c) by removing "foreign military sale Letter of Offer and Acceptance" and inserting in its place "LOA".

9. Section 225.7304 is amended by revising the last sentence of paragraph (a); in paragraph (b)(1) by removing "A-E" and inserting in its place "architect-engineer"; and by revising paragraph (c) to read as follows:

**225.7304 Source selection.**

(a) \* \* \* The contracting officer shall honor such requests from the FMS customer only if the LOA or other written direction sufficiently fulfills the requirements of FAR subpart 6.3.

\* \* \* \* \*

(c) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions and warranties requested by the FMS customer).

\* \* \* \* \*

**225.7306 Exercise of options for FMS.**

10. The heading of section 225.7306 is revised to read as set forth above.

**225.7308 [Amended]**

11. Section 225.7308 is amended in paragraphs (a) and (b) by removing "foreign military sales" and inserting in its place "FMS".

**PART 253—FORMS**

12. The note at the end of Part 253 is amended to remove the entry "253.303-1513 United States Department of Defense Offer and Acceptance".

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**DEPARTMENT OF DEFENSE**

**48 CFR Part 246**

[DFARS Case 97-D038]

**Defense Federal Acquisition Regulation Supplement; Quality Assurance Among North Atlantic Treaty Organization Countries**

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update guidance pertaining to mutual acceptance of government quality assurance among North Atlantic Treaty Organization (NATO) countries.

**EFFECTIVE DATE:** August 17, 1998.

**FOR FURTHER INFORMATION CONTACT:** Rick Laysler, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703) 602-0350. Please cite DFARS Case 97-D038.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends DFARS 246.406 to update guidance pertaining to NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance and Usage of the Allied Quality Assurance Publications, and to remove obsolete references to STANAG 4108, Allied Quality Assurance Publications.

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97-D038.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Part 246**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR part 246 is amended as follows:

1. The authority citation for 48 CFR Part 246 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 246—QUALITY ASSURANCE**

2. Section 246.406 is amended by revising paragraph (1); and in paragraph (3), in the parenthetical sentence, by removing "225.74" and inserting in its place "225.78". The revised text reads as follows:

**246.406 Foreign governments.**

(1) *Quality assurance among North Atlantic Treaty Organization (NATO) countries.*

(i) NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance and Usage of the Allied Quality Assurance Publications—

(A) Contains the processes, procedures, terms, and conditions under which one NATO member nation will perform quality assurance for another NATO member nation or NATO organization;

(B) Standardizes the development, updating, and application of the Allied Quality Assurance Publications; and

(C) Has been ratified by the United States and other nations in NATO with certain reservations identified in STANAG 4107.

(ii) Departments and agencies shall follow STANAG 4107 when—

(A) Asking a NATO member nation to perform quality assurance; or

(B) Performing quality assurance when requested by a NATO member nation or NATO organization.

\* \* \* \* \*

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