

appropriations acts; and the restrictions of 10 U.S.C. 2534 do not apply to purchases of commercial items incorporating ball or roller bearings. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96-D319 in correspondence.

#### C. Paperwork Reduction Act

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

#### D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534, and was effective upon enactment on September 23, 1996. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

#### List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 225 is amended as follows:

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

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

#### PART 225—FOREIGN ACQUISITION

2. Section 225.7005 is amended by revising paragraph (a)(3) to read as follows:

##### 225.7005 Waiver of certain restrictions.

\* \* \* \* \*

(a) \* \* \*

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country or would impede the reciprocal

procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

\* \* \* \* \*

3. Section 225.7019-3 is amended by revising paragraph (a)(1)(iv) to read as follows:

##### 225.7019-3 Waiver.

(a) \* \* \*

(1) \* \* \*

(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

\* \* \* \* \*

[FR Doc. 97-1038 Filed 1-16-97; 8:45 am]

BILLING CODE 5000-04-M

#### 48 CFR Parts 225 and 252

[DFARS Case 96-D021]

#### Defense Federal Acquisition Regulation Supplement; Contingent Fees—Foreign Military Sales

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to changes adopted in the Federal Acquisition Regulation (FAR), pertaining to elimination of requirements for Government review of a prospective contractor's contingent fee arrangements.

**DATES:** Effective date: January 17, 1997.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense

Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D021 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule amends DFARS 225.73, 252.212-7001, and 252.225-7027 to conform to the FAR revisions published as Item I of Federal Acquisition Circular 90-40 (61 FR 39188, July 26, 1996), which removed requirements for prospective contractors to provide certain information to the Government regarding contingent fee arrangements. This interim rule makes the associated DFARS changes related to contingent fees under contracts for foreign military sales.

##### B. Regulatory Flexibility Act

This interim rule is not expected to 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 the rule removes requirements for contracting officer review of contingent fee arrangements under foreign military sales contracts, but does not change the policy pertaining to the allowability of contingent fees under these contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96-D021 in correspondence.

##### C. Paperwork Reduction Act

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

##### D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule conforms the DFARS to changes already adopted in the FAR. Federal Acquisition Circular 90-40 (FAR Case 93-009) eliminated the clause at FAR 52.203-4, Contingent Fee Representation and Agreement; the

Standard Form 119, Statement of Contingent or Other Fees; and the associated requirements in FAR Subpart 3.4 relating to review and evaluation of contingent fees. This interim rule makes the associated DFARS changes related to contingent fees for foreign military sales. Immediate publication of an interim rule is necessary because compliance with the existing requirements of DFARS 225.7302 and 225.7303 is no longer feasible. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

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. 421 and 48 CFR Chapter 1.

## **PART 225—FOREIGN ACQUISITION**

### **225.7302 [Amended]**

2. Section 225.7302 is amended by removing paragraph (a)(1), and by redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(1) through (a)(4).

3. Section 225.7303-4 is revised to read as follows:

#### **225.7303-4 Contingent fees.**

(a) Contingent fees are allowable under defense contracts provided that the fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR part 31 and FAR subpart 3.4). For FMS, it is extremely difficult for DoD to verify the services, or the value of the services. Therefore, the cost of allowable contingent fees (as defined in FAR subpart 3.4) is limited to \$50,000.

(b) Under DoD 5105.38-M, Security Assistance Management Manual, Letters of Offer and Acceptance 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 contracts resulting from the Letters of Offer prohibit the payment of contingent fees unless the payments have been identified and payment approved in writing by the foreign

customer before contract award. (See 225.7308(a).)

4. Section 225.7308 is amended by revising paragraph (a) to read as follows:

#### **225.7308 Contract clauses.**

(a) Use the clause at 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales, in all solicitations and contracts for foreign military sales.

\* \* \* \* \*

## **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

5. Section 252.212-7001 is amended by revising the clause date to read "(JAN 1997)", and by removing the entry "252.225-7027 Limitation on Sales Commissions and Fees (12 U.S.C. 2779)" and inserting in its place the entry "252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (22 U.S.C. 2779)".

6. Section 252.225-7027 is revised to read as follows:

#### **252.225-7027 Restriction on Contingent Fees for Foreign Military Sales.**

As prescribed in 225.7308(a), use the following clause. Insert in paragraph (b) of the clause the name(s) of any foreign country customer(s) listed in 225.7303-4(b).

Restriction on Contingent Fees for Foreign Military Sales (Jan 1997)

Contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are not an allowable cost, and the contract price (including any subcontracts) shall not include any direct or indirect cost of contingent fees for Contractor (or subcontractor) sales representatives for solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract, unless—

(a) The amount of contingent fee per foreign military sale does not exceed \$50,000; and

(b) For sales to the Government(s) of \_\_\_\_\_, the contingent fees have been identified and payment approved in writing by the named Government(s) before contract award.

(End of clause)

[FR Doc. 97-1039 Filed 1-16-97; 8:45 am]

BILLING CODE 5000-04-M

## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

#### **49 CFR Part 1**

[OST Docket No. 1; Amdt. 1-283]

### **Organization and Delegation of Powers and Duties, Delegations of Authority to the Maritime Administrator**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority of the Secretary of Transportation under sections 1008, 1009, and 1013 of Public Law 104-324. This amendment adds a new paragraph 1.66(x) to reflect this delegation of authority.

**EFFECTIVE DATE:** This rule becomes effective January 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR-318, Room 7301, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366-2811 or Gwyneth Radloff, Office of General Counsel (C-50), Department of Transportation, Room 10424, 400 Seventh Street, SW, Washington, DC 20590, (202) 366-9305.

**SUPPLEMENTARY INFORMATION:** Under sections 1008, 1009, and 1013 of Public Law 104-324, the Secretary of Transportation (Secretary) may convey the right, title, and interest of the United States Government in certain specified vessels, equipment, and materials to specified recipients or for specified purposes. This amendment to 49 CFR Part 1 delegates the Secretary's authorities related to the above responsibilities to the Maritime Administrator.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

### **PART 1—[AMENDED]**

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