

*Original equipment manufacturer* means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

*Original manufacturer* means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

(b) *Selecting suppliers.* In accordance with section 818(c)(3) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), as amended by section 817 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), the Contractor shall—

(1) First obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from—

- (i) The original manufacturers of the parts;
- (ii) Their authorized suppliers; or
- (iii) Suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized suppliers;

(2) If electronic parts are not available as provided in paragraph (b)(1) of this clause, obtain electronic parts that are not in production by the original manufacturer or an authorized aftermarket manufacturer, and that are not currently available in stock from a source listed in paragraph (b)(1) of this clause, from suppliers identified by the Contractor as contractor-approved suppliers, provided that—

(i) For identifying and approving such contractor-approved suppliers, the Contractor uses established counterfeit prevention industry standards and processes (including inspection, testing, and authentication), such as the DoD-adopted standards at <https://assist.dla.mil/>;

(ii) The Contractor assumes responsibility for the authenticity of parts provided by such contractor-approved suppliers; and

(iii) The Contractor's selection of such contractor-approved suppliers is subject to review and audit by the contracting officer; or

(3)(i) Take the actions in paragraphs (b)(3)(ii) through (b)(3)(iv) of this clause if the Contractor—

(A) Obtains an electronic part from—

(1) A source other than any of the sources identified in paragraph (b)(1) or (b)(2) of this clause, due to nonavailability from such sources; or

(2) A subcontractor (other than the original manufacturer) that refuses to accept flowdown of this clause; or

(B) Cannot confirm that an electronic part is new or previously unused and that it has not been comingled in supplier new production or stock with used, refurbished, reclaimed, or returned parts.

(ii) If the contractor obtains an electronic part pursuant to paragraph (b)(3)(i) of this clause—

(A) Promptly notify the Contracting Officer in writing. If such notification is required for an electronic part to be used in a designated lot of assemblies to be acquired under a single contract, the Contractor may submit one notification for the lot, providing identification of the assemblies containing the parts (e.g., serial numbers);

(B) Be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and

(C) Make documentation of inspection, testing, and authentication of such electronic parts available to the Government upon request.

(c) *Traceability.* If the Contractor is not the original manufacturer of, or authorized supplier for, an electronic part, the Contractor shall—

(1) Have risk-based processes (taking into consideration the consequences of failure of an electronic part) that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic part is supplied as a discrete electronic part or is contained in an assembly;

(2) If the Contractor cannot establish this traceability from the original manufacturer for a specific electronic part, be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and

(3)(i) Maintain documentation of traceability (paragraph (c)(1) of this clause) or the inspection, testing, and authentication required when traceability cannot be established (paragraph (c)(2) of this clause) in accordance with FAR subpart 4.7; and

(ii) Make such documentation available to the Government upon request.

(d) *Government sources.* Contractors and subcontractors are still required to comply with the requirements of paragraphs (b) and (c) of this clause, as applicable, if—

(1) Authorized to purchase electronic parts from the Federal Supply Schedule;

(2) Purchasing electronic parts from suppliers accredited by the Defense Microelectronics Activity; or

(3) Requisitioning electronic parts from Government inventory/stock under the authority of 252.251–7000, Ordering from Government Supply Sources.

(i) The cost of any required inspection, testing, and authentication of such parts may be charged as a direct cost.

(ii) The Government is responsible for the authenticity of the requisitioned parts. If any such part is subsequently found to be counterfeit or suspect counterfeit, the Government will—

(A) Promptly replace such part at no charge; and

(B) Consider an adjustment in the contract schedule to the extent that replacement of the counterfeit or suspect counterfeit electronic parts caused a delay in performance.

(e) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer.

(End of clause)

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 225 and 252

[Docket DARS–2016–0021]

RIN 0750–AI97

### Defense Federal Acquisition Regulation Supplement: New Qualifying Countries—Japan and Slovenia (DFARS Case 2016–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 add Japan and Slovenia as qualifying countries.

**DATES:** Effective August 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jo Ann Reilly, telephone 571–372–6176.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is amending the DFARS to add Japan and Slovenia as qualifying countries. The Secretary of Defense recently signed reciprocal defense procurement agreements with these countries. These agreements were placed into force on June 4, 2016, for Japan and June 21, 2016, for Slovenia. The agreements remove discriminatory barriers to procurements of supplies and services produced by industrial enterprises of the other country to the extent mutually beneficial and consistent with national laws, regulations, policies, and international obligations. These agreements do not cover construction or construction material. Japan and Slovenia are already designated countries under the World Trade Organization Government Procurement Agreement.

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

This rule only updates the list of qualifying countries in the DFARS by adding the newly qualifying countries of Japan and Slovenia. The definition of “qualifying country” is updated in each of the following clauses; however, this revision does not impact the clause prescriptions for use, or applicability at or below the simplified acquisition threshold, or applicability to commercial items. The clauses are:

DFARS 252.225–7001, Buy American and Balance of Payments Program; DFARS 252.225–7002, Qualifying Country Sources as Subcontractors; DFARS 252.225–7012, Preference for Certain Domestic Commodities; DFARS 252.225–7017, Photovoltaic Devices; DFARS 252.225–7021, Trade Agreements; and DFARS 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program.

### 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. 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. Japan and Slovenia are added to the list of 23 other countries that have similar reciprocal defense procurement agreements with DoD. These requirements affect only 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 DFARS 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 rule affects the certification and information collection requirements in the clause 252.225–7021, Trade Agreements, currently approved under OMB Control Number 0704–229, entitled “DFARS Part 225, Foreign Acquisition, and related clauses,” in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because it merely shifts the category under which items from Japan and Slovenia must be listed.

### 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 48 CFR chapter 1.

### PART 225—FOREIGN ACQUISITION

#### 225.003 [Amended]

■ 2. Section 225.003 is amended in paragraph (10), the definition of “qualifying country”, by adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

#### 225.872–1 [Amended]

■ 3. Section 225.872–1 is amended in paragraph (a) by adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 252.225–7001 [Amended]

■ 4. Section 252.225–7001 is amended by—

■ a. In the clause heading, removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place;

■ b. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively; and

■ c. In the Alternate I clause heading—

■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

#### 252.225–7002 [Amended]

■ 5. Section 252.225–7002 is amended by—

■ a. In the clause heading, removing the date “(DEC 2012)” and adding “(AUG 2016)” in its place; and

■ b. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

#### 252.225–7012 [Amended]

■ 6. Section 252.225–7012 is amended by—

■ a. In the clause heading, removing the date “(FEB 2013)” and adding “(JUL 2016)” in its place; and

■ b. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

#### 252.225–7017 [Amended]

■ 7. Section 252.225–7017 is amended by—

■ a. In the clause heading, removing the date “(JUN 2016)” and adding “(AUG 2016)” in its place; and

■ b. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

#### 252.225–7021 [Amended]

■ 8. Section 252.225–7021 is amended by—

■ a. In the clause heading, removing the date “(JUN 2015)” and adding “(AUG 2016)” in its place; and

■ b. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively; and

■ c. In the Alternate II clause heading—

■ i. Removing the date “(JUN 2015)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

#### 252.225–7036 [Amended]

■ 9. Section 252.225–7036 is amended by—

■ a. In the clause heading, removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ b. In paragraph (a), the definition of “qualifying country”, adding, in

alphabetical order, the countries of “Japan” and “Slovenia”, respectively; and

■ c. In the Alternate I clause heading—  
■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a) definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

■ d. In the Alternate II clause heading—  
■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

■ e. In the Alternate III clause heading—  
■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

■ f. In the Alternate IV clause heading—  
■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

■ g. In the Alternate V clause heading—  
■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 245 and 252

[Docket DARS-2016-0023]

### Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

**DATES:** Effective August 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6115; facsimile 571-372-6094.

**SUPPLEMENTARY INFORMATION:** This final rule amends the DFARS as follows—

1. Updates the direction to contracting officers at DFARS 245.402-70 to review the guidance in DFARS Procedures, Guidance, and Information (PGI) for oversight and surveillance of contractor-acquired property; and

2. In DFARS clause 252.225-7021, Trade Agreements-Alternate II, corrects paragraph (a) definition of “designated country” to include the country of Croatia. DFARS final rule 2013-D005, Clauses with Alternates—Foreign Acquisition, published at 79 FR 65816 on November 5, 2014, created separate prescriptions for each foreign-related basic clause and provision, as well as each of its alternate clauses and provisions. In addition, the rule stated the full text of each clause or provision alternate. In the restatement of the full text of DFARS 252.225-7021-Alternate II, the country of Croatia was inadvertently omitted.

#### List of Subjects in 48 CFR 245 and 252

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 245 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 245 and 252 continues to read as follows:

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

#### PART 245—GOVERNMENT PROPERTY

■ 2. Revise section 245.402-70 to read as follows:

##### 245.402-70 Policy.

Review the guidance at PGI 245.402-70 with regard to oversight and surveillance of contractor-acquired property.

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

##### 252.225-7021 [Amended]

■ 3. Amend section 252.225-7021 by, in the Alternate II clause—

a. Removing the clause date “(JUN 2016)” and adding “(AUG 2016)” in its place; and

b. In paragraph (a) definition of “designated country” in paragraph (i), adding, in alphabetical order, the country of “Croatia”.

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## SURFACE TRANSPORTATION BOARD

### 49 CFR Part 1002

[Docket No. EP 542 (Sub-No. 24)]

### Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2016 Update

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rules.

**SUMMARY:** The Board updates for 2016 the fees that the public must pay to file certain cases and pleadings with the Board. In this update, the following results are obtained: 18 fees increased by \$50 or less, 15 fees increased by \$100 to \$199, 23 fees increased by \$200 to \$300, 19 fees increased by more than \$300, and the remaining 58 fees will be maintained at their current level.

**DATES:** These rules are effective September 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** David T. Groves, (202) 245-0327, or Andrea Pope-Matheson (202) 245-0363. [TDD for the hearing impaired: 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** The Board’s regulations at 49 CFR 1002.3 provide for an annual update of the Board’s entire user-fee schedule. Fees are generally revised based on the cost study formula set forth at 49 CFR 1002.3(d). As compared with the 2015 fee update, the 2016 fee changes adopted here reflect a combination of a 1.46% across-the-board increase to salary costs; no change in publication cost levels; increases to two of the three Board Overhead cost factors; and a slight decrease to the third Board Overhead cost factor from its comparable 2015 level, resulting from the mechanical application of the update formula in 49 CFR 1002.3(d). Results from the formula application indicate that justified fee amounts in this 2016 update decision either remain unchanged (58 fee items), increase by \$50 or less (18 fee items), increase by \$300 or less (38 fee items) or increase over \$300 (19 fee items) from their respective 2015 update levels. No new fee items are proposed in this proceeding. However, there is an expansion of existing fee item 98 to now include monthly and quarterly Waybill