

Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as an American good; or

(ii) In order not to impair integration of the military and commercial industrial base.

(C) A determination whether to grant a public interest exception shall be made after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at less than \$100,000;

(2) By the head of the contracting activity for acquisitions valued at \$100,000 or more but less than \$1,000,000; or

(3) By the agency head for acquisitions valued at \$1,000,000 or more.

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## 48 CFR Parts 225 and 252

### Defense Federal Acquisition Regulation Supplement; Supercomputers

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFFARS) to reflect a statutory restriction on the acquisition of supercomputers of foreign manufacture.

**DATES:** *Effective date:* July 3, 1995.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before September 1, 1995, 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 (AT&T)DP(DAR), IMD 3D139, 3062

Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D301 in all correspondence related to this issue.

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

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim DFARS rule implements Section 8023 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335). Section 8023 and comparable sections in prior Defense Appropriations Acts require that any supercomputers acquired with defense funds appropriated in Fiscal Years 1988 through 1995 must be manufactured in the United States, unless the Secretary of Defense certifies to Congress that the supercomputers are for national security purposes and are not available from United States manufacturers.

##### 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 places restrictions on the acquisition of foreign products. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D301 in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose any new information collection requirements which require the approval of OMB 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 compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement Section 8023 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335). 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 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 is revised to read as follows:

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

## PART 225—FOREIGN ACQUISITION

2. Sections 225.7023, 225.7023-1, 225.7023-2, and 225.7023-3 are added to read as follows:

### 225.7023 Restriction on supercomputers.

#### 225.7023-1 Restriction.

In accordance with Section 8101 of Pub. L. 100-202, and similar sections in subsequent Defense Appropriations Acts, do not purchase any supercomputer that is not manufactured in the United States.

#### 225.7023-2 Waiver.

The restriction in 225.7023-1 may be waived by the Secretary of Defense on a case-by-case basis, after the Secretary of Defense certifies to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

#### 225.7023-3 Contract clause.

Use the clause at 252.225-7011, Restrictions on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225-7011 is added to read as follows:

### 252.225-7011 Restriction on Acquisition of Supercomputers.

As prescribed in 225.7023-3, use the following clause:

Restriction on Acquisition of Supercomputers (Insert month and year of publication in the **Federal Register**)

The Contractor agrees that any supercomputers furnished under this contract have been manufactured in the United States.