

Homeland Security Department

3025.7002-2

threats, including protecting the nation's borders, transportation system, maritime domain or critical infrastructure, as determined by the contracting officer.

3025.7002 Restrictions on clothing, fabrics, and related items.

3025.7002-1 Restrictions.

The following restrictions implement section 604 of the American Recovery and Reinvestment Act of 2009 and they apply to all types of actions, orders, exercising of an option and contracts. Except as provided in subsection (HSAR) 48 CFR 3025.7002-2, do not acquire, either as end products or components, any item listed in paragraphs (a) or (b) of this section, if the item is directly related to the national security interests of the United States and the item has not been grown, reprocessed, reused, or produced in the United States:

(a) Commercial or non-commercial items—(1) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof); or

(2) Tents, tarpaulins, covers, textile belts, bags, protective equipment (such as body armor), sleep systems (sleeping bags), load carrying equipment (such as fieldpacks), textile marine equipment, parachutes or bandages.

(b) Non-commercial items—

(1) Cotton and other natural fiber products.

(2) Woven silk or woven silk blends.

(3) Spun silk yarn for cartridge cloth.

(4) Synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics).

(5) Canvas products.

(6) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(7) Any item of individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (b).

3025.7002-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in (HSAR) 48 CFR 3025.7002-1:

(a) Acquisitions at or below the simplified acquisition threshold.

(b) Acquisition of items not directly related to national security interests of the United States.

(c) Acquisitions of any of the items otherwise covered by (HSAR) 48 CFR 3025.7002-1, if the Chief Procurement Officer determines that the item grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at United States market prices. When this exception is used—

(1) Only the DHS Chief Procurement Officer is authorized to make the domestic nonavailability determination.

(2) The DHS Component, not later than 7 days after the award of the contract, must post a notification that the exception has been applied on the Government-wide point of entry, which may be combined with any synopsis of award.

(3) The supporting documentation for the CPO determination prepared by the DHS Component(s) shall include—

(i) An analysis of alternatives that would not require a domestic nonavailability determination; and

(ii) A written justification by the requiring activity, with specificity, why such alternatives are unacceptable.

(d) Acquisitions of items listed in FAR 48 CFR 25.104.

(e) Emergency acquisitions by activities located outside the United States.

(f) Acquisitions by vessels in foreign waters.

(g) Acquisitions of incidental amounts of cotton, other natural fibers, wool or other item covered by (HSAR) 48 CFR 3025.7002-1(a)-(b) incorporated in an end product, for which the estimated value of the item so covered is not more than 10 percent of the total price of the end product.

(h) Acquisitions of items otherwise covered by (HSAR) 48 CFR 3025.7002-1(a) and (b) for which restricting a procurement of the items to those that have been grown, reprocessed, reused, or produced in the United States would be inconsistent with United States obligations under international agreements. Acquisitions of products that are eligible products per (FAR) 48 CFR Subpart 25.4 are not covered by these

3025.7002-3

restrictions; see (HSAR) 48 CFR 3025.7003-2 for specific application of trade agreements.

3025.7002-3 Specific application of trade agreements.

(a) For covered items entitled to non-discriminatory treatment under the World Trade Organization Agreement on Government Procurement (WTO GPA), or any Free Trade Agreement (FTA) listed in (FAR) 48 CFR Subpart 25.4, this subpart is applied as follows—

(1) For solicitations, orders, exercising of an option and contracts issued by any component other than Transportation Security Administration (TSA), in which any covered items will be procured with a value that is both above the simplified acquisition threshold, and below the applicable trade agreement threshold in (FAR) 48 CFR 25.402, apply (HSAR) 48 CFR 3025.7002-1. Section 3025.7002-2(h) will exclude eligible products of designated countries with FTA thresholds beneath the simplified acquisition threshold from coverage of section 604.

(2) For solicitations, orders, exercising of an option and contracts issued by any component other than Transportation Security Administration (TSA), in which any covered items will be procured with a value exceeding \$194,000 (or the superseding threshold upon updating of (FAR) 48 CFR 25.402), (HSAR) 48 CFR 3025.7002-1 does not apply if the items are eligible products per FAR 48 CFR Subpart 25.4; follow (FAR) 48 CFR part 25 instead.

(3) For solicitations, orders, exercising of an option and contracts issued by TSA in which any covered items will be procured with a value exceeding the simplified acquisition threshold, (HSAR) 48 CFR 3025.7002 applies to all covered items except those from Mexico, Canada or Chile because TSA is listed as a covered governmental entity in the North American Free Trade Agreement (NAFTA) and the U.S.-Chile Free Trade Agreement but TSA is excluded from all other trade agreements.

(b) For covered items from a country that is not entitled to non-discriminatory treatment under the WTO GPA, or any FTA listed in (FAR) 48 CFR subpart 25.4, apply the restrictions of

48 CFR Ch. 30 (10-1-10 Edition)

(HSAR) 48 CFR 3025.7002 to all solicitations, orders, exercising of an option and contracts exceeding the simplified acquisition threshold in place of the Buy America Act policies at (FAR) 48 CFR Subpart 25.1.

3025.7003 Contract clauses.

Unless an exception under (HSAR) 48 CFR 3025.7002-2(a), (b), (e) or (f) applies, insert the clause at (HSAR) 48 CFR 3052.225-70, Requirement for Use of Certain Domestic Commodities, in solicitations, exercising of an option, contract modifications that add new items (or which make a cardinal change) and contracts with a value exceeding the simplified acquisition threshold when procuring any item covered under (HSAR) 48 CFR 3025.7002-1(a) or (b).

PART 3026—OTHER SOCIO-ECONOMIC PROGRAMS [RESERVED]

PART 3027—PATENTS, DATA, AND COPYRIGHTS

Subpart 3027.2—Patents

Sec.

3027.205 Adjustment of royalties.

3027.208 Use of patented technology under the North American Free Trade Agreement.

Subpart 3027.3—Patent Rights Under Government Contracts

3027.304-1 General.

3027.304-5 Appeals.

3027.305 Administration of Patent Rights Clauses.

3027.305-4 Administration of Patent Rights Clause.

3027.306 Licensing background patent rights to third parties.

Subpart 3027.4—Rights in Data and Copyrights

3027.404 Basic Rights in Data clause.

3027.409 Solicitation provisions and contract clauses.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.