**List of Subjects in 48 CFR Parts 222 and 252**

Government procurement.

**Clare M. Zebrowski,**

*Editor, Defense Acquisition Regulations System.*

■ Accordingly, the interim rule amending 48 CFR parts 222 and 252, which was published in the **Federal Register** at 75 FR 27946 on May 19, 2010, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 222, and 252 continues to read as follows:

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

## PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

[Sections 222.7401 through 222.7404 redesignated as sections 222.7402 through 222.7405]

■ 2. Redesignate sections 222.7401 through 222.7404 as section 222.7402 through 222.7405 respectively.

■ 3. Add a new section 222.7401 to read as follows:

**222.7401 Definition.**

*Covered subcontractor,* as used in this subpart, is defined in the clause at 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements.

■ 4. Revise newly designated sections 222.7403 through 222.7405 to read as follows:

**222.7403 Applicability.**

This requirement does not apply to the acquisition of commercial items (including commercially available off-the-shelf items).

**222.7404 Waiver.**

(a) The Secretary of Defense may waive, in accordance with paragraphs (b) through (d) of this section, the applicability of paragraphs (a) or (b) of 222.7402 to a particular contract or subcontract, if the Secretary or the Deputy Secretary personally determines that the waiver is necessary to avoid harm to national security interests of the United States, and that the term of the contract or subcontract is not longer than necessary to avoid such harm.

(b) The waiver determination shall set forth the grounds for the waiver with specificity, stating any alternatives considered, and explain why each of the alternatives would not avoid harm to national security interests.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) The Secretary of Defense will transmit the determination to Congress and simultaneously publish it in the **Federal Register**, not less than 15 business days before the contract or subcontract addressed in the determination may be awarded.

**222.7405 Contract clause.**

Use the clause at 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, in all solicitations and contracts (including task or delivery orders and bilateral modifications adding new work) valued in excess of $1 million utilizing funds appropriated or otherwise made available by the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118), except in contracts for the acquisition of commercial items, including commercially available off-the-shelf items.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.222–7006 by:

■ a. Revising the introductory text;

■ b. Revising the clause date; and

■ c. Revising paragraphs (b)(2) and (d) to read as follows:

**252.222–7006 Restrictions on the Use of Mandatory Arbitration Agreements.**

As prescribed in 222.7405, use the following clause:

**RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEC 2010)**

* * * * *

(b) * * *

(2) Certifies, by signature of the contract, that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce, any provision of any existing agreements, as described in paragraph (b)(1) of this clause, with respect to any employee or independent contractor performing work related to such subcontract.

* * * * *

(d) The Secretary of Defense may waive the applicability of the restrictions of paragraph (b) of this clause in accordance with Defense Federal Acquisition Regulation Supplement 222.7404.

(End of clause)

[FR Doc. 2010–30669 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 225 and 252

**RIN 0750–AG57**

### Defense Federal Acquisition Regulation Supplement; Restriction on Ball and Roller Bearings (DFARS Case 2006–D029)

**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 revise the domestic source restriction on acquisition of ball and roller bearings. This final rule, which implements the DoD annual appropriations act domestic source restrictions, requires that each ball or roller bearing be manufactured in the United States, its outlying areas, or Canada, and that the cost of the bearing components manufactured in the United States, its outlying areas, or Canada, shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

**DATES:** *Effective Date:* December 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, 703–602–0328.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The current DFARS restriction on ball and roller bearings (225.7009) implemented two statutory restrictions: 10 U.S.C. 2534(a)(5) and annual appropriations act restrictions. 10 U.S.C. 2534(a)(5) required that all ball and roller bearings and bearing components, either as end items or components of end items, be wholly manufactured in the United States or Canada. The annual defense appropriations act restrictions require that all ball and roller bearings be produced by a domestic source and be of domestic origin. This restriction does not apply to the acquisition of commercial items, either as components or end products, unless the commercial bearings themselves are purchased as the end products.

### II. Discussion and Analysis

*A. Analysis of Public Comments*

DoD published a proposed rule in the **Federal Register** on May 7, 2010 (75 FR 25167). The comment period closed on July 6, 2010. Three respondents submitted comments.

1. Nonavailablity

*Comment:* One respondent commented that, in some cases, it is necessary to import foreign bearings.

*Response:* Noted. This rule does not make any change in the existing ability to waive the restriction on a case-by-case basis by certifying that adequate domestic supplies are not available and that the acquisition must be made in order to acquire capability for national security purposes.

*Comment:* Another respondent was of the opinion that there is not really a shortage of bearings compliant with 10 U.S.C. 2534(a)(5), just an unwillingness on the part of distributors and wholesalers to devote the time to market research and tracking the supply chain to demonstrate the availability of compliant bearings.

*Response:* Commercial bearings manufacturers make business decisions based on the market. Many suppliers of commercial bearings and bearing components are unwilling to track the origin of bearings components and subcomponents because the Government does not have enough market leverage for it to be in the business interest of the manufacturers and suppliers to do so. Therefore, many bearings must be treated as nondomestic because the manufacturer is unable to certify to domestic sourcing of the components.

*Comment:* This respondent recommended retaining the requirement for 100 per cent domestic content for the following reasons:

a. According to the respondent, changing the rules now to allow cheaper sources after using public law to create domestic sourcing would be detrimental to the companies that have recently invested in capacity.

*Response:* The reason for changing the rule is statutory change. 10 U.S.C. 2534(a)(5) is no longer in effect because Congress allowed the restriction to expire.

Furthermore, the experience of Government buyers indicates that, in general, the current regulation has not prevented the loss of domestic sources, due to lack of Government leverage with regard to acquisition of commercial bearings. The Government continues to issue more and more waivers in the instances when bearings are no longer available that the manufacturer or distributor can certify as having 100 percent domestic components. Bearings manufacturers have stated that manufacture of the retainer, inner race, and outer race are not core competencies. Therefore, more and more bearings manufacturers obtain these components from foreign sources, which are significantly cheaper, and then do the complex manufacture of the bearing in this country. The advantage of changing the regulation to allow some foreign components without the need for a waiver is that fewer waivers will be required and then the requirement for manufacture in the United States and 50 percent domestic components remains in effect.

b. According to the respondent, quality of components is very critical to eliminating latent defects. The respondent stated that retaining a fully domestic source will make it easier to track the components and determine the cause of any failure.

*Response:* Nothing in this rule alters DoD procedures for ensuring the quality of the products it purchases.

c. The respondent considered that retaining all of this skill set is critical to maintaining a viable industrial base. According to the respondent, there is potential in the near future to have difficulty getting bearings even from qualifying countries, leaving China as the sole source of this critical component. The respondent was concerned that China may manipulate the market if there is no ready domestic supplier of bearings.

*Response:* DoD has existing authority under 10 U.S.C. 2304(c)(3) and implementing DFARS provisions to restrict procurements to domestic sources when it determines that a particular industrial capability must be protected for national security reasons, and can use this authority for bearings if it proves necessary.

d. The respondent stated that the fact that the rule affects any small business supplier is worthy of consideration, not just when it affects a significant number.

*Response:* The language in the preamble to the proposed rule relating to impact on small business entities is based on the statutory requirement to assess whether the rule will have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The analysis, however, did assess both positive and negative impact on small business entities.

2. Exemptions

*Comment:* One respondent was concerned that the language in 252.225–7016 is unchanged from the currently existing exemption.

a. According to the respondent, by allowing the same exemption and lowering the content requirement to 50 per cent, a bearing used in assembly for a military application may be sourced from anywhere in the world, including countries that have less sophisticated production capabilities. The respondent recommended revision of the exemptions to require manufacture of domestically nonavailable ball or roller bearings in a designated country.

b. The respondent also mentioned that when the Government needs to buy a spare or replacement foreign commercial bearing, it cannot do so without a waiver.

*Response:* a. This case is only concerned with the definition of what constitutes a domestic bearing, based on statutory change. The definition of a domestic bearing still requires manufacture in the United States, its outlying areas, or Canada. There was no change in the statute regarding the exemptions from these requirements.

b. The issue relating to problems of buying spare or replacement foreign commercial bearings is also a problem of the current regulation, and is a direct result of the statutory lack of exceptions when buying commercial ball or roller bearings as the end item rather than as a component.

3. Waivers

*Comment:* One respondent stated that waivers go too far. If there is no domestic bearing to meet the requirement, then the restriction should only be waived to allow purchase of bearings from designated countries. The respondent was concerned that the proposal may ease the restrictions beyond those found in the Buy American Act, thus opening the possibility of allowing bearings for defense purposes to include components manufactured by unreliable sources. The respondent noted that there are 2,059 FSC ball and roller bearings on the DLA FY 2010 waiver list. According to the respondent, sourcing is open to any country of origin, with price being the sole determining factor for award.

*Response:* This rule implements section 8065 of the DoD Appropriations Act for Fiscal Year 2002 (Pub. L. 107–117) and the same restriction in subsequent DoD appropriations acts. While DoD interprets the phrase "produced by a domestic source and of domestic origin" in a way that is comparable to the Buy American Act definition of "domestic end product", this does not imply that DoD is empowered to determine exceptions and waiver authority under this statute on any basis other than the specific provisions of the appropriations act. There is no basis provided in the appropriations act for restricting acquisitions of domestically

nonavailable items to the products of designated countries. Price is the sole determining factor for award after determination that the offered products meet the criteria of the solicitation. Nor does the respondent provide any evidence that the products of nondesignated countries are necessarily unreliable. Requiring a reliable product would be a more direct way to achieve the objective than prohibiting acquisition from nondesignated countries.

4. Confusing or Inconsistent

*Comment:* One respondent commented that the rules on bearings are only applied by DoD, not other Federal agencies, and that the rules are different depending on whether bearings are purchased as an end product or a component.

*Response:* These inconsistencies are inherent within the law. The restrictions on bearings are contained in the annual defense appropriations acts, and apply only to DoD. Further, the law provides an exception for commercial bearings purchased as components, but does not allow the same exception for bearings when purchased as end products.

5. Need for Qualified Suppliers (QSL) List and Qualified Manufacturers List (QML)

*Comment:* One respondent recommended that other protections should be put in place in conjunction with this change to the domestic source restriction on ball and roller bearings. The respondent also recommended that the annual defense appropriations acts should include a requirement for the use of QSLs and QMLs when acquiring ball and roller bearings.

*Response:* FAR subpart 9.2 addresses qualifications requirements. FAR 9.202 provides the policy criteria that must be met in order for the head of the agency to establish a qualification requirement. The head of the agency must address in writing why a qualification requirement is necessary, and address the likely costs for testing and evaluation that will be incurred for a potential offeror to become qualified. A DoD agency that purchases bearings and products that contain bearings was concerned about the impact a QSL would have on competition. In addition, although a QSL would address quality issues, the agency does not consider that the level of effort associated with a QSL would be an economical solution to pursue. With regard to a QML, the agency indicated that a QML would add very little value to the purchase of bearings. The manufacturers are usually approved by the drawings, a Qualified Producers List (QPL), or the Engineering Service Activities (ESA). The recommended statutory change is outside the scope of this case. The intent of this case is to comply with the existing statute.

*B. Other Changes*

DoD incorporated three editorial changes in the final rule.

1. The reference at 225.7009–2(b) to the specialty metals restriction has changed from "225.7002–1(b)" to "225.7003–2."

2. Conforming changes are required to the clause dates in 252.212–7001.

3. In paragraph (b)(2) of DFARS 252.225–7016, ", its outlying areas" was added to "in the United States or Canada" to clarify that this requirement also applies to the outlying areas of the United States. It was not necessary to add this in the text in part 225, because in FAR 25.003, "United States" is defined to include the outlying areas. It could be inferred that this also applies in the clauses prescribed in part 225 (see 52.202–1(a)). However, it is clearer to explicitly add it.

**III. Executive Order 12866**

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

DoD does not expect this rule 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.* However, because this rule has impact on the application of domestic source restrictions, DoD has performed a final regulatory flexibility analysis, which is summarized as follows:

This rule revises the restriction on ball and roller bearings to implement the annual defense appropriations act restriction. The DFARS currently reflects the more stringent requirement of 10 U.S.C. 2534(a)(5), that the bearing and all main bearing components must be manufactured in the United States or Canada. This restriction expired on October 1, 2005. This rule interprets the annual defense appropriations act to allow a 50 percent component test similar to the Buy American Act component test.

The objective of the rule is to allow more flexibility to domestic bearings manufacturers in the acquisition of nondomestic components. The legal basis for the rule is section 8065 of the DoD Appropriations Act for Fiscal Year 2002 (Pub. L. 107–117) and the same restriction in subsequent DoD appropriations acts.

One respondent stated that the fact that the rule affects any small business supplier is worthy of consideration, not just a significant number. The analysis, however, did assess both positive and negative impact on small business entities. Generally, the impact is considered to be positive (see next paragraph). No changes were made to the rule as a result of the comment. The only alternative would be to do nothing, which would have worse results as more waivers are granted for nonavailability of domestic bearings.

The final rule affects manufacturers of bearings, bearing components, and noncommercial products that incorporate bearings.

- *Bearings.* This rule applies only to bearings purchased as end products or noncommercial bearings incorporated in noncommercial end products or noncommercial components of noncommercial end products. Because this rule allows some element of nondomestic content in ball and roller bearing components, as long as the United States- or Canadian-manufactured bearing contains less than 50 percent nondomestic bearing components, both large and small businesses may find greater numbers of sources from which to obtain ball and roller bearing components. Greater sourcing choices may enable small businesses to compete more successfully for DoD ball and roller bearing acquisitions.
- *Bearing components.* Manufacturers of domestic bearing components may face increased competition from manufacturers of nondomestic bearing components. However, many of the bearing components that are being outsourced are no longer readily available from domestic sources.
- *Manufacturers of noncommercial products incorporating bearings.* Manufacturers of noncommercial products incorporating bearings (both large and small businesses) will find it easier to acquire domestic bearings and will less frequently need to request nonavailability determinations.

There is no significant economic impact on small entities as a result of this rule. The impact of this rule on small business is expected to be predominantly positive. If this rule is not implemented, the regulations will continue to meet the statutory requirements, but more domestic nonavailability waivers would continue to be required, which would mean that there would be no requirement to manufacture such bearings in the

United States or Canada, or provide predominantly domestic components.

**V. Paperwork Reduction Act**

This final rule does not impose any new or modified reporting, recordkeeping, or 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 252**

Government procurement.

**Clare M. Zebrowski,**

*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. 421 and 48 CFR chapter 1.

## PART 225—FOREIGN ACQUISITION

■ 2. Revise section 225.7009–2 to read as follows:

**225.7009–2 Restriction.**

(a) Do not acquire ball and roller bearings unless—

(1) The bearings are manufactured in the United States or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components mined, produced, or manufactured in the United States or Canada exceeds 50 percent of the total cost of the bearing components of that ball or roller bearing.

(b) The restriction at 225.7003–2 may also apply to bearings that are made from specialty metals, such as high carbon chrome steel (bearing steel).

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**252.212–7001 [Amended]**

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read "(DEC 2010)"; and

■ b. In paragraph (b)(10) by removing "(MAR 2006)" and adding in its place "(DEC 2010)".

■ 4. Revise section 252.225–7016 to read as follows:

**252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.**

As prescribed in 225.7009–5, use the following clause:

**RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (DEC 2010)**

(a) *Definitions.* As used in this clause—

(1) *Bearing component* means the bearing element, retainer, inner race, or outer race.

(2) *Component,* other than a bearing component, means any item supplied to the Government as part of an end product or of another component.

(3) *End product* means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause—

(1) Each ball and roller bearing delivered under this contract shall be manufactured in the United States, its outlying areas, or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components mined, produced, or manufactured in the United States, its outlying areas, or Canada shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

(1) Commercial components of a noncommercial end product; or

(2) Commercial or noncommercial components of a commercial component of a noncommercial end product.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7009–4 of the Defense Federal Acquisition Regulation Supplement.

(e) If this contract includes DFARS clause 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, all bearings that contain specialty metals, as defined in that clause, must meet the requirements of that clause.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial items; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

[FR Doc. 2010–30670 Filed 12–7–10; 8:45 am]

**BILLING CODE 5001–08–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 100510220–0598–05]**

**RIN 0648–AY90**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Emergency Fisheries Closure in the Gulf of Mexico Due to the Deepwater Horizon MC252 Oil Spill; Amendment 4

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary emergency rule; request for comments.

**SUMMARY:** NMFS issues this temporary emergency rule to prohibit royal red shrimp fishing in a specific area of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ), in response to a fishery interaction of the Gulf shrimp fishery with sub-surface oil byproducts from the Deepwater Horizon MC252 oil spill. This temporary emergency rule supersedes the temporary emergency rule published December 1, 2010 (75 FR 74648) and will remain in effect for 60 days. The intended effect of this temporary emergency rule is to assure seafood safety and consumer confidence in Gulf seafood.

**DATES:** This rule is effective December 3, 2010, through 12:01 a.m., local time, February 2, 2011. Comments may be submitted through January 2, 2011.

**ADDRESSES:** You may submit comments on this rule, identified by "0648–AY90" by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.*
- *Fax:* 727–824–5308; *Attention:* Anik Clemens.
- *Mail:* Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* No comments will be posted for public viewing until after the comment period. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter "NOAA–NMFS–2010–0244" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the environmental assessment, signed on June 17, 2010, may be obtained from Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505; *telephone:* 727–824–5305; *e-mail: Susan.Gerhart@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Anik Clemens, *telephone:* 727–824–5305, *fax:* 727–824–5308; *e-mail: anik.clemens@noaa.gov.*