

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-23823 Filed 9-8-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 225, and 252

[DFARS Case 7-D022]

Defense Federal Acquisition Regulation Supplement; Buy American Act Exception for Information Technology Products

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the determination by the Under Secretary of Defense (Acquisition & Technology) that it is not in the public interest to apply the restrictions of the Buy American Act to U.S. made information technology products, in acquisition subject to the Trade Agreements Act.

DATES: Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 10, 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 97-D022 in all correspondence related to this issue.

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

SUPPLEMENTARY INFORMATION:

Background

This proposed rule adds a provision at DFARS 252.225-7020, Trade Agreements Certificate, and a clause at DFARS 252.225-7021, Trade Agreements, and makes other necessary amendments in DFARS Parts 212 and 225 to implement the determination, signed by the Under Secretary of

Defense (Acquisition & Technology) (USD (A&T)) on May 16, 1997, that it is not in the public interest, in acquisitions subject to the Trade Agreements Act, to apply the restrictions of the Buy American Act to U.S. made information technology products in Federal Supply Group 70 or 74. Federal Supply Group 70 includes general purpose automatic data processing equipment, software (including firmware), supplies, and support equipment. Federal Supply Group 74 includes office machines and visible record equipment.

In the determination and finding, USD (A&T) explains how the different rules of origin under the Trade Agreements Act and the Buy American Act result in evaluating products substantially transformed in the United States less favorably than if the product were substantially transformed in an eligible country. UDS (A&T) also finds that the different rules of origin place a disproportionately burdensome recordkeeping requirement on United States firms offering information technology products. Because manufacturers of information technology products commonly use worldwide sources for components, requiring manufacturers to distinguish between foreign and domestic components represents a significant deterrent to the acquisition of both commercial and state-of-the-art information technology products by DoD.

Regarding the certification requirements of this rule, for acquisition of information technology products subject to the Trade Agreements Act, the certification requirement in paragraph (c) of the proposed provision at 252.225-7020, Trade Agreements Certificate, replaces and simplifies the existing certification requirement in paragraph (c) of the provision at DFARS 252.225-7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate. Therefore, for the purposes of Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), this rule does not impose a new certification requirement.

B. Regulatory Flexibility Act

This rule may 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. An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows: The rule will apply to all offerors/contractors offering information technology products in Federal Supply

Group 70 or 74 to DoD, in acquisitions valued at \$190,000 or more. The rule will particularly benefit offerors of U.S. made information technology end products that do not qualify as domestic end products. However, suppliers of domestic information technology products will also benefit to the extent that they no longer need to track the source of components. The rule will also affect suppliers of components for such information technology products, to the extent that suppliers of domestic components may face increased competition from suppliers of foreign components.

With regard to the provision at 252.225-7003, Information for Duty-Free Entry Evaluation, the rule will have a positive impact on small entities, because the rule prescribes use of the provision in solicitation that include the clause FAR 52.225-10, Duty-Free Entry, rather than all solicitations that include the clause at 252.225-7001, Buy American Act and Balance of Payments Program. This will reduce the number of respondents by about 100,000, of which it is estimated that 35 percent may be small businesses, as it is generally the acquisitions of less than \$100,000 that will no longer include the provision. In addition, responses to the questions in paragraph (b) of the provision are no longer required for eligible products under a trade agreement, or for nonqualifying country components of domestic end products (U.S. made end products if Alternate I is used) unless the offeror plans to request duty-free entry.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from the address specified herein. 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 97-D022 in correspondence.

C. Paperwork Reduction Act

This rule will result in a reduction of paperwork burden on offerors. The existing certification requirement at DFARS 252.225-7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, has an approved information collection requirement under Office of Management and Budget (OMB) Clearance Number 0704-0259. This rule creates a certificate for use when the Trade Agreements Act, but neither the Buy American Act nor the Balance of Payments Program, applies. This

certificate is shorter than the Buy American Act-Trade Agreements-Balance of Payments Program Certificate and, therefore, reduces the burden on offerors.

In addition, the information collection requirements contained in the clause at DFARS 252.225-7003, Information for Duty-Free Entry Evaluation, are approved under OMB Clearance Number 0704-0187. It is estimated that by narrowing the clause prescription, limiting the requirement to respond when supplying domestic end products, and providing an alternate applicable to acquisitions of information technology products subject to the Trade Agreements Act, the amendments in this rule will result in an annual reduction of more than 486,000 hours in the paperwork burden.

List of Subjects in 48 CFR Part 212, 225, and 252

Government procurement.

Michele P. Peterson,

Executive Editor Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 212, 225, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 212, 225, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.301 is amended by redesignating paragraph (f)(i)(C) as (f)(i)(D), and by adding a new paragraph (f)(i)(C) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) * * *

(C) 252.225-7020, Trade Agreements Certificate.

* * * * *

PART 225—FOREIGN ACQUISITION

3. Section 225.000-70 is amended by revising paragraph (m) to read as follows:

225.000-70 Definitions.

* * * * *

(m) *U.S. made end product* is defined in the clauses at 252.225-7007, Buy American Act-Trade Agreements-Balance of Payments Program, and 252.225-7021, Trade Agreements.

4. Section 225.000-71 is amended by revising paragraph (c)(2) to read as follows:

225.000-71 General guidelines.

* * * * *

(c) * * *

(2) If the product is an eligible product under subpart 225.4, evaluate the offer under FAR 25.402, 225.105, and 225.402.

* * * * *

5. Section 225.102 is amended by revising paragraph (a)(3)(A), redesignating paragraphs (a)(3)(B) and (a)(3)(C) as paragraphs (a)(3)(C) and (a)(3)(D) respectively, and by adding a new paragraph (a)(3)(B) to read as follows:

225.102 Policy.

(a) * * *

(3)(A) Specific public interest exceptions for DoD for certain countries are in 225.872.

(B) The Under Secretary of Defense (Acquisition & Technology) has determined that, for procurements subject to the Trade Agreements Act, it is inconsistent with the public interest to apply the Buy American Act to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

* * * * *

6. Section 225.105 is amended by revising the introductory text and paragraphs (1), (2), and (3) to read as follows:

225.105 Evaluating offers.

Use the following procedures instead of those in FAR 25.105. These evaluation procedures do not apply to acquisitions of information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

(1) Treat offers of eligible products under acquisitions subject to trade agreements as qualifying country offers. Treat all other offers, except domestic offers, as nonqualifying country offers (see Example 4 in Table 25-1, Evaluation).

(2) Except as provided in paragraph (3) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see Example 1 in Table 25-1, Evaluation).

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225-10, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225-7003, Information for Duty-Free Entry Evaluation. See Example 1, Alternate II, in Table 25-1, Evaluation.

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(3) When application of the factor would not result in the award of a domestic end product, i.e., when no domestic offers are received (see Example 3 of Table 25-1, Evaluation) or when a qualifying country offer is lower than the domestic offer (see Example 2 of Table 25-1, Evaluation), evaluate nonqualifying country offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225-10, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225-7003, Information for Duty-Free Entry Evaluation (see Examples 2 and 3, Alternate II, of Table 25-1, Evaluation). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty (see Examples 2 and 3, Alternate I, of Table 25-1, Evaluation).

* * * * *

7. Section 225.109 is amended by revising paragraphs (a) and (d)(i) to read as follows:

§ 225.109 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225-7000, Buy American Act-Balance of Payments Program Certificate, instead of the provisions at FAR 52.225-1, Buy American Certificate, and FAR 52.225-6, Balance of Payments Program Certificate. Use the provision in any solicitation which includes the clause at 252.225-7001, Buy American Act and Balance of Payments Program, unless the solicitation includes either the clause at 252.225-7007, Buy American Act-Trade Agreements-Balance of Payments Program, or the clause at 252.225-7036, North American Free Trade Agreement Implementation Act.

* * * * *

(d) * * *

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply. Do not use the clause when the clause at 252.225-7021, Trade Agreements, is used.

* * * * *

8. Section 225.109-70 is revised to read as follows:

§ 225.109–70 Additional provisions and clauses.

(a) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts that include the clause at 252.225–7001, Buy American Act and Balance of Payments Program, or the clause at 252.225–7021, Trade Agreements.

(b) When only domestic ends products are acceptable, the solicitation must make a statement to that effect.

9. Section 225.302 is amended by revising paragraphs (a)(iii) and (a)(iv), and by adding a new paragraph (a)(v) to read as follows:

§ 225.302 Policy.

(a) * * *

(iii) Do not apply to qualifying end products;

(iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama; and

(v) For acquisitions subject to the Trade Agreements Act, do not apply to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

* * * * *

10. Section 225.402 is amended by revising paragraph (a)(1) to read as follows:

§ 225.402 Policy.

(a) * * *

(1) See 225.105 for evaluation of eligible products and U.S. made end products, except when acquiring information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

* * * * *

11. Section 225.408 is amended by revising paragraphs (a)(1) and (a)(2), by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(5) and (a)(6) respectively, and by adding new paragraphs (a)(3) and (a)(4) to read as follows:

§ 225.408 Solicitation provisions and contract clauses.

(a)(1) Use the provision at 252.225–7006, Buy American Act-Trade Agreements-Balance of Payments Program Certificate, instead of the provision at FAR 52.225–8, Buy American Act-Trade Agreements-Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7007, Buy American Act-Trade Agreements-Balance of Payments Program.

(2) Except as provided in 225.408(a)(4), use the clause at 252.225–

7007, Buy American Act-Trade Agreements-Balance of Payments Program, instead of the clause at FAR 52.225–9, Buy American Act-Trade Agreements-Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

(3) Use the provision at 252.225–7020, Trade Agreements Certificate, in all solicitations that include the clause at 252.225–7021, Trade Agreements.

(4) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–9, Buy American Act—Trade Agreements—Balance of Payments Program, when acquiring information technology products in Federal Supply Group 70 or 74. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

* * * * *

12. Section 225.603 is amended by revising paragraph (5) to read as follows:

225.603 Procedures.

* * * * *

(5) Exclude from the evaluation of domestic end products, or information technology end products in Federal Supply Group 70 or 74 in acquisitions subject to the Trade Agreements Act, any duty for nonqualifying country components listed in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, for which duty-free entry will be granted. Except for acquisitions of information technology end products in Federal Supply Group 70 or 74 subject to the Trade Agreements Act, apply the evaluation procedures for the Buy American Act in accordance with 225.105.

* * * * *

13. Section 225.605–70 is amended by adding paragraph (e) to read as follows:

225.605–70 Additional solicitation provisions and contract clauses.

* * * * *

(e) Use the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, in all solicitations that include the clause at FAR 52.225–10, Duty-Free Entry. Use the provision with its Alternate I when the clause at 252.225–7021, Trade Agreements, is used.

14. Section 225.872–4 is amended by revising the introductory text of paragraph (c) to read as follows:

225.872–4 Evaluation of offers.

* * * * *

(c) Evaluate offers of end products from the qualifying country sources in 225.872–1(b) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor. If the offer, as evaluated, is low or otherwise eligible for award, the contracting officer shall request an exemption of the Buy American Act/Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

15. Section 252.212–7001 is amended by revising the clause date; in paragraph (b) by removing the entry “252.225–7007 Trade Agreements (10 U.S.C. 2502–2582)” and in paragraph (b) by adding entries, in numerical order, to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense acquisitions of commercial items.

* * * * *

Contract Terms and Conditions Required to implement statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (____ 19____)

* * * * *

(b) * * *

____ 252.225–7007 Buy American Act—Trade Agreements—Balance of Payments Programs.

(____ Alternate I) (41 U.S.C. 10a–10d, 19 U.S.C. 2501–2518, and 19 U.S.C. 3301 note)

* * * * *

____ 252.225–7021 Trade Agreements

(____ Alternate I) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note)

* * * * *

16. Section 252.225–7003 is amended by revising the introductory text, the clause date, and paragraph (a); by removing paragraph (d); and by adding Alternate I. The revised and added text reads as follows:

252.225–7003 Information for duty-free entry evaluation.

As prescribed in 225.605–70(e), use the following provision:

Information for Duty-Free Entry Evaluation (xxx 19xx)

(a) Does the offeror propose to furnish—

(1) A domestic end product with nonqualifying country components for which the offeror requests duty-free entry; or

(2) A foreign end product consisting of end items, components, or material of foreign origin other than those that will be accorded duty-free entry as qualifying country end products or components, or eligible products under a trade agreement?

Yes ()

No ()

* * * * *

ALTERNATE I (xxx 19xx). As prescribed in 225.605–70(e), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Does the offeror propose to furnish a U.S. made end product with nonqualifying country components for which the offeror requests duty-free entry?

Yes ()

No ()

17. Section 252.225–7007 is amended by revising the section heading, and the clause title and date to read as follows:

252.225–7007 Buy American Act—Trade agreements—Balance of payments program.

* * * * *

Buy American Act—Trade Agreements—Balance of Payments Program

(xxx 19xx)

* * * * *

18. Section 252.225–7020 is added to read as follows:

252.225–7020 Trade Agreements certificate.

As prescribed in 225.408(a)(3), use the following provision:

Trade Agreements Certificate (xxx 19xx)

(a) Definitions.

“Caribbean Basin country end product,” “designated country end product,” “NAFTA country end product,” “nondesignated country end product,” “qualifying country end product,” and “U.S. made end product” have the meanings given in the Trade Agreements clause of this solicitation.

(b) Evaluation.

Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. Offers of foreign end products that are not U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products will not be considered for award, unless the Contracting Officer determines that there are no offers of such end products; or the offers of such end products are insufficient to fulfill the requirements; or a national interest exception to the Trade Agreements Act is granted.

(c) Certifications.

(1) The Offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end product.

(2) The following supplies are other nondesignated country end products:

(insert line item number)

(insert country of origin)

(End of provision)

19. Section 252.225–7021 is added to read as follows:

252.225–7021 Trade Agreements.

As prescribed in 225.408(a)(4), insert the following clause:

Trade Agreements (xxx 19xx)

(a) Definitions.

As used in this clause—

(1) Caribbean Basin country means—

Antigua and Barbuda

Aruba

Bahamas

Barbados

Belize

British Virgin Islands

Costa Rica

Dominica

Dominican Republic

El Salvador

Grenada

Guatemala

Guyana

Haiti

Honduras

Jamaica

Montserrat

Netherlands Antilles

Nicaragua

Panama

St. Kitts-Nevis

St. Lucia

St. Vincent and the Grenadines

Trinidad and Tobago

(2) Caribbean Basin country end product.—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles and apparel articles that are subject to textile agreements;

(B) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(C) Tuna, prepared or preserved in any manner in airtight containers; and

(D) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which Harmonized Tariff Schedule column 2 rates of duty apply.

(3) *Components* means those articles, materials, and supplies directly incorporated into end products.

(4) *Designated country* means—

Aruba

Austria

Bangladesh

Belgium

Benin

Bhutan

Botswana

Burkina Faso

Burundi

Canada

Cape Verde

Central African Republic

Chad

Comoros

Denmark

Djibouti

Equatorial Guinea

Finland

France

Gambia

Germany

Greece

Guinea

Guinea-Bissau

Haiti

Hong Kong

Ireland

Israel

Italy

Japan

Kiribati

Lesotho

Liechtenstein

Luxembourg

Malawi

Maldives

Mali

Mozambique

Nepal

Netherlands

Niger

Norway

Portugal

Republic of Korea

Rwanda

Sao Tome and Principe

Sierra Leone

Singapore

Somalia

Spain

Sweden

Switzerland

Tanzania U.R.

Togo

Tuvalu

Uganda

United Kingdom

Vanuatu

Western Samoa

Yemen

(5) *Designated country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(7) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) *Nondesignated country end product* means any end product that is not a U.S. made end product or a designated country end product.

(9) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(10) *Qualifying country* means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation (FAR) Supplement.

(11) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(12) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(13) *U.S. made end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the United States; or

(ii) In the case of an article that consists in whole or in part of materials from another

country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c) (1) The Contractor agrees to deliver under this contract only U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products unless, in its offer, it specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product other than a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product, unless—

(i) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(d) The offered price of end products listed under paragraph (c)(2) of the Trade Agreements Certificate provision of the solicitation must include all applicable duty, whether or not a duty-free entry certificate will be granted. The offered price of qualifying country, designated country, Caribbean Basin country, or NAFTA country end products for line items subject to the Trade Agreements Act, or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of U.S. made end products should not include duty for qualifying country components.

(End of clause)

ALTERNATIVE I (XXX 19XX). As described in 225.408(a)(4), delete Singapore from the list of designated countries in paragraph (a)(4) of the basic clause.

252.225-7035 [Amended]

20. Section 252.225-7035 is amended in the introductory text by revising the reference “225.408(a)(3)” to read “225.408(a)(5)”.

252.225-7036 [Amended]

21. Section 252.225-7036 is amended in the introductory text by revising the reference “225.408(a)(4)” to read “225.408(a)(6)”.

[FR Doc. 97-23656 Filed 9-8-97; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 833 and 852

RIN 2900-AI51

VA Acquisition Regulation: Department Protests

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Acquisition Regulations (VAAR) to delete coverage which duplicates or conflicts with the Federal Acquisition Regulation; to delete internal agency guidance to contracting officers; to delete obsolete references to the General Services Administration Board of Contract Appeals; to incorporate changes made by Federal Acquisition Circular (FAC) 90-40, Item XIII and FAC 90-45, Item XII; to publish VA policy regarding the availability of staff of the VA Board of Contract Appeals to serve as third party neutrals in alternative dispute resolution proceedings; and to update clauses and references. These changes will implement VA policy and are required to ensure that the VAAR corresponds with the requirements of the Federal Acquisition Regulation and public law.

DATES: Comments must be received on or before November 10, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to “RIN: 2900-AI51.” All written comments will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Don Kaliher; Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC 20420, (202) 273-8819.

SUPPLEMENTARY INFORMATION: As provided by Public Law 104-106, the Clinger-Cohen Act of 1996, the General Services Administration Board of Contract Appeals (GSCBA) no longer hears bid protests. Therefore, obsolete references to the GSCBA would be removed from the VAAR.

This proposed rule would clarify an existing VA procedure in 833.103(a), which allows an interested party to file