

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 252.225–7027 and 252.225–7028 [Amended]

31. Sections 252.225–7027 and 252.225–7028 are amended in the introductory text by removing “225.7308” and adding in its place “225.7307”.

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 225 and 252

#### [DFARS Case 2004–D034]

#### Defense Federal Acquisition Regulation Supplement; Restrictions on Totally Enclosed Lifeboat Survival Systems

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove text addressing restrictions on the acquisition of totally enclosed lifeboat survival systems. The text proposed for removal is based on fiscal year 1994 and 1995 appropriations act provisions that are no longer considered applicable, or is based on statutory provisions that apply only to the Navy.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before May 23, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2004–D034, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2004–D034 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

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

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This proposed rule removes DFARS 225.7008, Restrictions on totally enclosed lifeboat survival systems, and the corresponding contract clause at DFARS 252.225–7039. These restrictions implement Section 8124 of the Fiscal Year 1994 DoD Appropriations Act (Public Law 103–139), Section 8093 of the Fiscal Year 1995 DoD Appropriations Act (Public Law 103–335), and 10 U.S.C. 2534. Both appropriations act provisions state that none of the funds appropriated in “this or any other Act” could be used for the purchase of a totally enclosed lifeboat and associated davits and winches, if less than 50 percent of the entire system’s components are manufactured in the United States, and if less than 50 percent of the labor in the manufacture and assembly of the entire system is performed in the United States.

There is a presumption that any provision in an annual appropriations act is effective only for that fiscal year, unless permanency is clearly indicated by words of futurity, or the provision is of a general nature, bearing no relation to the object of the appropriations. At the time of implementation of the restrictions on acquisition of totally enclosed lifeboat systems in the DFARS, DoD interpreted the phrase “this or any other Act” to impart futurity to the restrictions on acquisition of totally enclosed lifeboat systems. DoD has reevaluated this interpretation and has determined that the appropriations act provisions upon which the DFARS coverage is based were not permanent legislation. This position is supported by review of case law, including a U.S. Comptroller General decision of September 16, 1987, B–228838, in which the General Accounting Office held that language such as “this or any other Act” does not indicate futurity.

10 U.S.C. 2534(a) restricts the acquisition of totally enclosed lifeboats that are components of naval vessels. Since this restriction impacts only the Navy, and 10 U.S.C. 2534(h) specifies that DoD may not use contract clauses or certifications, but must use management and oversight techniques, to implement this restriction, DFARS coverage for implementation of this restriction is considered unnecessary.

This rule was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

##### B. 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.*, because the domestic source restrictions of 10 U.S.C. 2534 still apply to the acquisition of totally enclosed lifeboats that are components of naval vessels. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D034.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any 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.

#### Michele P. Peterson,

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Parts 225 and 252 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

##### §§ 225.7008 through 225.7008–4 [Removed and Reserved]

2. Sections 225.7008 through 225.7008–4 are removed and reserved.

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

##### § 252.225–7039 [Removed and Reserved]

3. Section 252.225–7039 is removed and reserved.

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