

**PART 207—ACQUISITION PLANNING**

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

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

**207.102 [Removed]**

■ 2. Section 207.102 is removed.

■ 3. Section 207.103 is revised to read as follows:

**207.103 Agency-head responsibilities.**

(d)(i) Prepare written acquisition plans for—

(A) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at \$10 million or more;

(B) Acquisitions for production or services when the total cost of all contracts for the acquisition program is estimated at \$50 million or more for all years or \$25 million or more for any fiscal year; and

(C) Any other acquisition considered appropriate by the department or agency.

(ii) Written plans are not required in acquisitions for a final buy out or one-time buy. The terms “final buy out” and “one-time buy” refer to a single contract that covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(e) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (d)(i)(A) and (B) of this section on a program basis. Other acquisition plans may be written on either a program or an individual contract basis.

(g) The program manager, or other official responsible for the program, has overall responsibility for acquisition planning.

(h) For procurement of conventional ammunition, as defined in DoDD 5160.65, Single Manager for Conventional Ammunition (SMCA), the SCMA will review the acquisition plan to determine if it is consistent with retaining national technology and industrial base capabilities in accordance with 10 U.S.C. 2304(c)(3) and Section 806 of Public Law 105–261. The department or agency—

(i) Shall submit the acquisition plan to the address in PGI 207.103(h); and

(ii) Shall not proceed with the procurement until the SMCA provides written concurrence with the acquisition plan. In the case of a non-concurrence, the SCMA will resolve issues with the Army Office of the Executive Director for Conventional Ammunition.

**207.104 [Removed]**

■ 4. Section 207.104 is removed.

■ 5. Section 207.105 is revised to read as follows:

**207.105 Contents of written acquisition plans.**

In addition to the requirements of FAR 7.105, planners shall follow the procedures at PGI 207.105.

■ 6. Section 207.471 is amended by revising paragraphs (b) and (c) to read as follows:

**207.471 Funding requirements.**

\* \* \* \* \*

(b) DoD leases are either capital leases or operating leases. See FMR 7000.14–R, Volume 4, Chapter 7, Section 070207.

(c) Use procurement funds for capital leases, as these are essentially installment purchases of property.

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 225 and 252**

**RIN 0750–AF34**

**Defense Federal Acquisition Regulation Supplement; Prohibition on Acquisition From Communist Chinese Military Companies (DFARS Case 2006–D007)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

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

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1211 of the National Defense Authorization Act for Fiscal Year 2006. Section 1211 prohibits DoD from acquiring United States Munitions List items from Communist Chinese military companies.

**DATES:** *Effective date:* September 8, 2006.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before November 7, 2006, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2006–D007, using any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2006–D007 in the subject line of the message.

• *Fax:* (703) 602–0350.

• *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

• *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

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

**SUPPLEMENTARY INFORMATION:****A. Background**

This interim rule adds DFARS policy and a contract clause to implement Section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 1211 prohibits DoD from acquiring goods or services, through a contract or a subcontract with a Communist Chinese military company, if the goods or services being acquired are on the munitions list of the International Trafficking in Arms Regulations (the United States Munitions List at 22 CFR Part 121). Section 1211 also provides for certain exceptions and waiver authority.

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 rule affects only those entities that are a part of the industrial base of the People’s Republic of China or that are owned or controlled by, or affiliated with, an element of the Government or armed forces of the People’s Republic of China. 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 2006–D007.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget 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 urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). Section 1211 prohibits DoD from acquiring goods or services from a Communist Chinese military company, if the goods or services being acquired are on the United States Munitions List maintained by the Department of State. Comments received in response to this interim rule will be considered in the formation of the final rule.

#### List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

#### Michele P. Peterson,

*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. Sections 225.770 through 225.770-5 are added to read as follows:

#### 225.770 Prohibition on acquisition of United States Munitions List items from Communist Chinese military companies.

This section implements Section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). See PGI 225.770 for additional information relating to this statute, the terms used in this section, and the United States Munitions List.

##### 225.770-1 Definitions.

As used in this section—

(a) *Communist Chinese military company* and *United States Munitions List* are defined in the clause at 252.225-7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies.

(b) *Component* means an item that is useful only when used in conjunction with an end item (22 CFR 121.8).

(c) *Part* means any single unassembled element of a major or minor component, accessory, or attachment, that is not normally subject to disassembly without the destruction or impairment of design use (22 CFR 121.8).

##### 225.770-2 Prohibition.

Do not acquire supplies or services covered by the United States Munitions List (USML) (22 CFR part 121), through a contract or subcontract at any tier, from any Communist Chinese military company. This prohibition does not apply to components and parts of covered items unless the components and parts are themselves covered by the USML.

##### 225.770-3 Exceptions.

The prohibition in 225.770-2 does not apply to supplies or services acquired—

- (a) In connection with a visit to the People's Republic of China by a vessel or an aircraft of the U.S. armed forces;
- (b) For testing purposes; or
- (c) For the purpose of gathering intelligence.

##### 225.770-4 Identifying USML items.

(a) Before issuance of a solicitation, the requiring activity shall notify the contracting officer in writing whether the items to be acquired are covered by the USML. The notification shall identify any covered item(s) and shall provide the pertinent USML reference(s) from 22 CFR Part 121.

(b) The USML includes defense articles and defense services that fall into 21 categories. Since not all USML items are themselves munitions (*e.g.*, protective personnel equipment, military training equipment), the requiring activity should consult the USML before concluding that an item is or is not covered by the USML.

##### 225.770-5 Waiver of prohibition.

(a) The prohibition in 225.770-2 may be waived, on a case-by-case basis, if an official identified in paragraph (b) of this subsection determines that a waiver is necessary for national security purposes.

(b) The following officials are authorized, without power of delegation, to make the determination specified in paragraph (a) of this subsection:

- (1) The Under Secretary of Defense (Acquisition, Technology, and Logistics).
- (2) The Secretaries of the military departments.

(3) The Component Acquisition Executive of the Defense Logistics Agency.

(c) The official granting a waiver shall notify the congressional defense committees within 30 days after the date of the waiver.

■ 3. Section 225.1103 is amended by adding paragraph (4) to read as follows:

#### 225.1103 Other provisions and clauses.

\* \* \* \* \*

(4) Unless an exception in 225.770-3 applies, use the clause at 252.225-7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies, in solicitations and contracts involving the delivery of items covered by the United States Munitions List.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.225-7007 is added to read as follows:

#### 252.225-7007 Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies.

As prescribed in 225.1103(4), use the following clause:

Prohibition On Acquisition of United States Munitions List Items From Communist Chinese Military Companies (SEP 2006)

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

*Communist Chinese military company* means any entity that is—

- (1) A part of the commercial or defense industrial base of the People's Republic of China; or
- (2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

*United States Munitions List* means the munitions list of the International Traffic in Arms Regulation in 22 CFR Part 121.

(b) Any supplies or services covered by the United States Munitions List that are delivered under this contract may not be acquired, directly or indirectly, from a Communist Chinese military company.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items covered by the United States Munitions List.

(End of clause)

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