

10. Amend section 252.227–7019 by revising the clause date; redesignating paragraphs (f) through (i) as (g) through (j) respectively; adding new paragraph (f); and revising newly redesignated paragraphs (g)(5), (h)(1), and (h)(3) to read as follows:

**Validation of Asserted Restrictions—
Computer Software**

* * * * *

**VALIDATION OF ASSERTED
RESTRICTIONS—COMPUTER SOFTWARE
(DATE)**

* * * * *

(f) *Major systems.* When the Contracting Officer challenges an asserted restriction regarding noncommercial computer software for a major system or a subsystem or component thereof on the basis that the computer software was not developed exclusively at private expense, the Contracting Officer shall sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the computer software was developed exclusively at private expense.

(g) * * *

(5) If the Contractor fails to respond to the Contracting Officer's request for information or additional information under paragraph (g)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with paragraph (f) of this clause and the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

* * * * *

(h) * * *

(1) The Government agrees that, notwithstanding a Contracting Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (h)(3) of this clause, it will honor the asserted restriction—

* * * * *

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head will notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (h)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with government purpose legends for any purpose, and authorize others to do so; or restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS), or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked

with Restrictive Legends. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Contractor's right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

* * * * *

11. Amend section 252.227–7037 by revising the clause date and revising paragraphs (b), (c), (f), and (l) to read as follows:

* * * * *

**252.227–7037 Validation of Restrictive
Markings on Technical Data.**

* * * * *

**VALIDATION OF RESTRICTIVE
MARKINGS ON TECHNICAL DATA (DATE)**

* * * * *

(b) *Presumption regarding development exclusively at private expense.*

(1) *Commercial items.* For commercially available off-the-shelf items (defined at 41 U.S.C. Section 431(c)) in all cases, and for all other commercial items except as provided in paragraph (b)(2) of this clause, the Contracting Officer shall presume that a Contractor's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Contracting Officer shall not challenge such assertions unless information provided by the Contracting Officer demonstrates that the item, component, or process was not developed exclusively at private expense.

(2) *Major systems.* The presumption of development exclusively at private expense does not apply to major systems or subsystems or components thereof, except for commercially available off-the-shelf items (which are governed by paragraph (b)(1) of this clause). When the Contracting Officer challenges an asserted restriction regarding technical data for a major system or a subsystem or component thereof on the basis that the item, component, or process was not developed exclusively at private expense, the Contracting Officer shall sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the item, component, or process was developed exclusively at private expense.

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except as provided in paragraph (b) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

* * * * *

(f) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, the

Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with paragraph (b) of this clause and the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer shall comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

* * * * *

(l) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data. (End of clause)

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BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

**Defense Acquisition Regulations
System**

[DFARS Case 2008–D027]

48 CFR Parts 215, 234, 242, and 252

**Defense Federal Acquisition
Regulation Supplement; Cost and
Software Data Reporting System**

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

ACTION: Proposed rule with request for comments.

SUMMARY: DoD proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to set forth DoD Cost and Software Data Reporting system requirements for major defense acquisition programs and major automated information system programs.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 6, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008–D027, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2008–D027 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>.

www.regulations.gov, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703-602-0311.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend the DFARS to set forth the DoD requirement for offerors to:

- Describe the standard Cost and Software Data Reporting (CSDR) process offerors intend to use to satisfy the requirements of the CSDR Manual, DoD 5000.04-M-1, and the Government-approved contract CSDR plan, DD Form 2794, and the related Resource Distribution Table (RDT), in proposals in response to solicitations for Major Defense Acquisition Programs and Major Automated Information System programs;

- Provide comments on the adequacy of the CSDR contract plan, and the related Resource Distribution Table contained in the solicitation; and,

- Submit with their pricing proposal: the DD Form 1921, Cost Data Summary Report; DD Form 1921-1, Functional Cost-Hour Report; and, DD Form 1921-2, Progress Curve Report.

During contract performance, the contractor will be required to:

- Utilize a documented standard Cost and Software Data Reporting (CSDR) process that satisfies the guidelines contained in the CSDR Manual DoD 5000.04-M-1;

- Use management procedures that provide for generation of timely and reliable information for the Contractor Cost Data Reports, and Software Resources Data Reports;

- Use the Government-approved contract CSDR plan, DD Form 2794, Cost and Software Data Reporting Plan with the related Resource Distribution Table, and DD Form 1921-3, Contractor Business Data Report, as the basis for reporting; and

- Require subcontractors, or subcontracted effort if subcontractors have not been selected, to comply with the Cost and Software Data Reporting requirements.

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

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to set forth Cost and Software Data Reporting System reporting requirements that are essential for the DoD to estimate the cost of current and future weapon systems. The reported data will also be very

useful in performing contract price analysis, comparing prices of similar systems, and for capturing contractor-provided cost estimates in standard formats to facilitate comparison across several contractors. At this time, DoD is unable to estimate the number of small entities to which this rule will apply.

DoD invites comments from small businesses and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite U.S.C. 601 (DFARS Case 2008-D027) in correspondence.

C. Paperwork Reduction Act

The information collection requirements under this proposed rule were previously approved by the Office of Management and Budget, under Clearance Number 0704-0188. The requirements of this proposed rule are not expected to significantly change the burden hours approved under Clearance Number 0704-0188.

List of Subjects in 48 CFR Parts 215, 234, 242, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 215, 234, 242, and 252 as follows:

1. The authority citation for 48 CFR parts 215, 234, 242, and 252 continues to read as follows:

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

PART 215—CONTRACTING BY NEGOTIATION

215.403-5 [Removed]

2. Remove section 215.403-5.

PART 234—MAJOR SYSTEM ACQUISITION

3. Add subpart 234.71 to read as follows:

Subpart 234.71—Cost and Software Data Reporting

Sec.

234.7100 Policy.

234.7101 Solicitation provision and contract clause.

Subpart 234.71—Cost and Software Data Reporting

234.7100 Policy.

(a) The Cost and Software Data Reporting (CSDR) requirement is mandatory for major defense acquisition programs (as defined in 10 U.S.C. 2430), and major automated information system programs (as defined in 10 U.S.C. 2445a) as specified in DoDI 5000.02, Operation of the Defense Acquisition System and the DoD 5000.04-M-1, CSDR Manual. The CSDR system is applied in accordance with the reporting requirements established in DoDI 5000.02.

(b) Prior to contract award, Contracting Officers shall consult with the Defense Cost and Resource Center to determine that the offeror selected for award has proposed a standard Cost and Software Data Reporting (CSDR) system, as described in the offeror's proposal in response to the provision at 252.234-70XX, that is in compliance with DoDI 5000.02, Operation of the Defense Acquisition System, and the DoD 5000.04-M-1, CSDR Manual.

(c) The Defense Cost and Resource Center contact information is located at PGI 234.7100.

234.7101 Solicitation provision and contract clause.

(a) Use the provision at 252.234-70XX, Notice of Cost and Software Data Reporting System, in all solicitations for major defense acquisition programs and major automated information system programs that exceed \$50 million. The clause may also be used on selected contracts below \$50 million, but greater than \$20 million as determined by the DoD program manager with the approval of the Defense Cost and Resource Center (*see* PGI 234.7100).

(b) Use the clause at 252.234-70YY, Cost and Software Data Reporting (CSDR), in all solicitations and contracts for major defense acquisition programs and major automated information system programs that exceed \$20 million. The clause may also be used for the CSDR Software Resources Data Reporting requirement on selected contracts below \$20 million as determined by the DoD program manager with the approval of the Defense Cost and Resource Center (*see* PGI 234.7100).

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

4. Revise section 242.503–2 to read as follows:

242.503–2 Postaward conference procedure.

(a) DD Form 1484, Post-Award Conference Record, may be used in conducting the conference and in preparing the conference report.

(b) For contracts that include the clause at 252.234–70YY, postaward conferences shall include a discussion of the Contractor's standard Cost and Software Data Reporting (CSDR) process that satisfies the guidelines contained in the CSDR Manual DoD 5000.04–M–1 and the requirements in the Government approved contract CSDR plan, DD Form 2794, Cost and Software Data Reporting Plan and related Resource Distribution Table, and DD Form 1921–3, Contractor Business Data Report.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 252.234–70XX to read as follows:

252.234 70XX Notice of Cost and Software Data Reporting System.

As prescribed in 234.7101(a), use the following provision:

NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM (DATE)

(a) The offeror shall—

(1) Describe the standard Cost and Software Data Reporting (CSDR) process that it intends to use to satisfy the requirements of the CSDR Manual, DoD 5000.04–M–1, and the Government-approved contract CSDR plan, DD Form 2794 and related Resource Distribution Table contained in the solicitation. For Contractor Cost and Data Reporting (CCDR) application, the description will demonstrate how reports are based, to the maximum extent possible, upon actual cost transactions and not cost allocations. The description will also show how the data from the offeror's accounting system will be mapped into the standard reporting categories required in the Contractor CCDR data item descriptions. The document shall also describe how the offeror segregates recurring and nonrecurring costs;

(2) Provide comments on the adequacy of the CSDR contract plan and related Resource Distribution Table contained in the solicitation; and

(3) Submit the DD Form 1921, Cost Data Summary Report, DD Form 1921–1, Functional Cost-Hour Report, and DD Form 1921–2, Progress Curve Report, with its pricing proposal.

(b) The offeror shall identify the subcontractors or the subcontracted effort, if the subcontractors have not been selected, to whom the CSDR requirements will apply.

This will be accomplished by providing comments on the Resource Distribution Table contained in the solicitation. The offeror shall be responsible for ensuring the selected subcontractors comply with the requirements of the CSDR System. The offeror shall also be responsible for notifying the Government prior to changes in subcontractor or planned subcontract circumstances affecting CSDR compliance.

(End of provision)

6. Add section 252.234–70YY to read as follows:

252.234 70YY Cost and Software Data Reporting System.

As prescribed in 234.7101(b), use the following clause:

COST AND SOFTWARE DATA REPORTING SYSTEM (DATE)

(a) In the performance of this contract, the Contractor shall use—

(1) A documented standard Cost and Software Data Reporting (CSDR) process that satisfies the guidelines contained in the CSDR Manual DoD 5000.04–M–1;

(2) Management procedures that provide for generation of timely and reliable information for the Contractor Cost Data Reports (CCDRs) and Software Resources Data Reports (SRDRs) required by the CCDR and SRDR data items of the contract. These procedures will also maximize use of actual cost transactions rather than cost allocations; and

(3) The Government-approved contract CSDR plan, DD Form 2794, Cost and Software Data Reporting Plan and related Resource Distribution Table, and DD Form 1921–3, Contractor Business Data Report, as the basis for reporting in accordance with the required CSDR data item descriptions (DIDs).

(b) The Contractor shall require the following subcontractors to comply with the CSDR requirements:

(Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the CSDR requirement of the clause.)

(End of clause)

[FR Doc. 2010–10762 Filed 5–6–10; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[DFARS Case 2006–D029]

48 CFR Part 225

RIN 0750–AG57

Defense Federal Acquisition Regulation Supplement; Department of Defense (DoD); Restriction on Ball and Roller Bearings

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the domestic source restriction on acquisition of ball and roller bearings. The current DFARS restriction on ball and roller bearings requires that the bearings and the main bearing components be manufactured in the U.S. or Canada. This requirement was based on the restriction at 10 U.S.C. 2534(a)(5), which expired on October 1, 2005. The proposed revision interprets the annual defense appropriations act domestic source restriction on acquisition of ball and roller bearings in a manner similar to the domestic source restriction of the Buy American Act.

DATES: Comments on the proposed rule should be submitted to the address shown below on or before July 6, 2010, to be considered in the formulation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D029, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2006–D029 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

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

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.