

Subchapter 3025.70 American Recovery and Reinvestment Act Restrictions on Foreign Acquisition

(Note: This subchapter may be deleted once the HSAR is changed to accommodate the HSAR deviations of 3/5/2013 and 3/14/2013.)

3025.7000 Scope of subpart.

HSAR class deviation, Applicability of the “Kissell Amendment” to Department of Homeland Security Acquisitions, dated March 5, 2013 (available at https://www.dhs.gov/sites/default/files/publications/cpo-HSARclassdeviation13-01_0.pdf), makes permanent and extends the restrictions on the acquisition of certain foreign textile products, directly related to national security interests, described in HSAR Subpart 3025.70 to all DHS acquisitions. A contracting officer with an acquisition involving items such as clothing, clothing components, tents, tarpaulins, covers, textile belts, bags, body armor, sleeping bags, fieldpacks, textile marine equipment, parachutes, bandages, or any other products containing natural fiber products, woven silk or blends, spun silk yarn, synthetic fabric or coated synthetic fabric, canvas, or wool should carefully consider the class deviation. The class deviation indicates it is applicable until the HSAR is appropriately changed.

3025.7002 Restrictions on clothing, fabrics, and related items.

3025.7002-2 Exceptions.

(c)

(3) If market research, including the analysis of alternatives (AoA) required by this subsection, establishes that the Government’s requirements for covered items cannot be met domestically, or through eligible products when the TAA applies, the contracting officer shall submit the supporting documentation required in paragraph (70) of this section to OCPO for CPO review and approval using the DHS Buy American Reporting Tool.

(70) *Documentation Requirements.* When the exception at HSAR 3025.7002-2(c) is applicable to the procurement, the AoA and written justification shall be documented using Appendix AE Template for Individual or Class Determination and Findings (D&F) For Domestic Nonavailability Exceptions to the Kissell Amendment. The D&F shall be concurred by the HCA, approved by the CPO, and reviewed by the Made in America Office (MIAO) within the Office of Management and Budget (OMB) before award is made. Once approved by the CPO, Acquisition Policy and Legislation (APL) will submit the determination to the MIAO for review. When an acquisition is conducted under reduced competition due to urgency (see FAR 6.302-2 and 13.106-1(b)) or where the agency is obligated by law to act more quickly than the review procedures established in this section allow, follow HSAM 3025.103(b)(2)(iii)(D)(I). The D&F shall be prepared by the requiring office in coordination with the contracting activity and document the market research activities undertaken to determine that a specific item(s) is domestically nonavailable, i.e., the item(s) grown, reprocessed, reused, or produced in the United

States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at United States market prices. This includes identification of:

- (i) Market research methods used to identify domestically manufactured items capable of satisfying the requirement;
- (ii) Domestic items considered and a detailed explanation as to why the domestic item(s) does not meet the needs of the Government;
- (iii) Trade Agreements Act (TAA) compliant items considered, including country of origin, and a detailed explanation as to why the TAA compliant item(s) does not meet the needs of the Government, if the TAA is applicable to the requirement; and
- (iv) Nondomestic items considered and a detailed explanation as to why the nondomestic item(s) is the only item that meets the needs of the Government.

3025.7003 Contract clauses.

HSAR class deviation 13-01, Amendment 1, Requirement for Use of Certain Domestic Commodities, dated March 14, 2013 (available at https://www.dhs.gov/sites/default/files/publications/cpo-HSARclassdeviation13-01%E2%80%93amendment1_0.pdf), amends the clause at HSAR 3052.225-70, Requirement for Use of Certain Domestic Commodities (AUG 2009). Accordingly, the new amended clause in the deviation (with a date of MAR 2013) shall be used. The deviation version is reprinted below for the convenience of the contracting officer.

REQUIREMENT FOR USE OF CERTAIN DOMESTIC COMMODITIES (MAR 2013) (DEVIATION 13-01)

(a) Definitions. As used in this clause-

- (1) “Commercial,” as applied to an item described in subsection (b) of this clause, means an item of supply, whether an end product or component, that meets the definition of “commercial item” set forth in (FAR) 48 CFR 2.101.
- (2) “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.
- (4) “Non-commercial,” as applied to an item described in subsections (b) or (c) of this clause, means an item of supply, whether an end product or component, that does not meet the definition of “commercial item” set forth in (FAR) 48 CFR 2.101.
- (5) “Qualifying country” means a country with a memorandum of understanding or international agreement with the United States under which DHS procurement is covered.
- (6) “United States” includes the possessions of the United States.

(b) The Contractor shall deliver under this contract only such of the following commercial or non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

- (1) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof; or
- (2) Tents, tarpaulins, covers, textile belts, bags, protective equipment (such as body armor), sleep systems, load carrying equipment (such as fieldpacks), textile marine equipment, parachutes or bandages.

(c) The Contractor shall deliver under this contract only such of the following non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

- (1) Cotton and other natural fiber products.
- (2) Woven silk or woven silk blends.
- (3) Spun silk yarn for cartridge cloth.
- (4) Synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics).
- (5) Canvas products.
- (6) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).
- (7) Any item of individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (c).

(d) This clause does not apply-

- (1) To items listed in (FAR) 48 CFR 25.104, or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at United States market prices;
- (2) To incidental amounts of non-compliant fibers if the total value of non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item; or
- (3) To items that are eligible products per (FAR) 48 CFR Subpart 25.4.

(End of clause)