



Homeland  
Security

MEMORANDUM FOR: Heads of Contracting Activities

FROM: Paul Courtney **PAUL R COURTNEY** Digitally signed by PAUL R COURTNEY  
Chief Procurement Officer Date: 2023.06.28 16:06:41 -04'00'

SUBJECT: Homeland Security Acquisition Regulation Class Deviation  
(Number 23-02) – Implementation of the Homeland Procurement  
Reform Act

**Purpose:** This Homeland Security Acquisition Regulation (HSAR) class deviation implements the Homeland Procurement Reform Act, Section 7112 of Subtitle B of Title LXXI of Division G of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117-263) dated December 23, 2022, as follows:

- (a) Adds Subpart 3025.72 – Homeland Procurement Reform Act Requirements on Certain Clothing and Protective Equipment;
- (b) Announces two special clauses, 3052.225-100 Homeland Procurement Reform Act – Covered Items (JUNE 2023) and 3025.225-101 Homeland Procurement Reform Act – Small Business Requirements; and
- (c) Announces one special provision, 3025.225-102 Homeland Procurement Reform Act Certificate – Small Business Requirements.

**Effective Date:** Immediately.

**Background:** On December 23, 2022, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117-263) was signed into law. Section 7112 of Subtitle B of Title LXXI of Division G, the Homeland Procurement Reform Act (Act), requires that frontline operational components take specific actions regarding procurements of covered items. These actions include ensuring any procurement of covered items by a frontline operational component meet the following criteria:

- (1) To the maximum extent possible, not less than one-third of funds obligated in a specific fiscal year for the procurement of such covered items shall be covered items that are manufactured *or* supplied in the United States (U.S.) by entities that qualify as small business concerns; and
- (2) Covered items can only be *supplied* to the extent that the U.S. small business concern is –
  - (a) unable to manufacture covered items in the U.S.;
  - (b) an entity registered with the System for Award Management (or successor system) administered by the General Services Administration; and
  - (c) in compliance with ISO 9001:2015 of the International Organization for Standardization (or successor standard) or a standard determined appropriate by the Secretary to ensure the quality of products and adherence to applicable statutory and regulatory requirements.

“Covered item” means –

- (A) Footwear provided as part of a uniform;
- (B) Uniforms;
- (C) Holsters and tactical pouches;
- (D) Patches, insignia, and embellishments;
- (E) Chemical, biological, radiological, and nuclear protective gear;
- (F) Body armor components intended to provide ballistic protection for an individual, consisting of one or more of the following:
  - (i) Soft ballistic panels;
  - (ii) Hard ballistic plates; or
  - (iii) Concealed armor carriers worn over a uniform; or
  - (iv) External armor carriers worn over a uniform; and
- (G) Any other item of clothing or protective equipment as determined appropriate by the Secretary.

“Frontline operational component” means any of the following entities of the Department –

- (A) U.S. Customs and Border Protection;
- (B) U.S. Immigration and Customs Enforcement;
- (C) The United States Secret Service;
- (D) The Transportation Security Administration;
- (E) The Federal Protective Service;
- (F) The Federal Emergency Management Agency;
- (G) The Federal Law Enforcement Training Centers; and
- (H) The Cybersecurity and Infrastructure Security Agency.

#### **Applicability of DHS Special Clauses and Provision:**

**(1) Homeland Procurement Reform Act – Covered Items (JUNE 2023)** (Attachment 2):

Contracting officers shall insert the full text of the special clause as follows:

- New solicitations and contracts for covered items, as defined in the Act and regardless of dollar value, awarded on or after June 21, 2023;
- Existing indefinite delivery vehicles and agreements for covered items, as defined in the Act and regardless of dollar value, awarded before the effective date of this class deviation if new orders or calls will be issued.

**(2) Homeland Procurement Reform Act – Small Business Requirements (JUNE 2023)**

(Attachment 3): Contracting officers shall insert the full text of the special clause as follows:

- New solicitations and contracts for covered items, as defined in the Act and regardless of dollar value, awarded on or after June 21, 2023;
- Existing indefinite delivery vehicles and agreements for covered items, as defined in the Act and regardless of dollar value, awarded before the effective date of this class deviation if new orders or calls will be issued.

**(3) Homeland Procurement Reform Act Certificate – Small Business Requirements (JUNE 2023)** (Attachment 4): Contracting officers shall insert the full text of the special provision as follows:

- New solicitations and contracts for covered items, as defined in the Act and regardless of dollar value, awarded on or after June 21, 2023;
- Existing solicitations for covered items, as defined in the Act and regardless of dollar value.

**Applicability of Commercial Clauses and Provisions:**

- (1) When the clause at FAR 52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services is included in a solicitation and contract for covered items, as defined in the Act and regardless of dollar value, contracting officers shall also include the full text of the special clauses.
- (2) When the provision at FAR 52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services is included in a solicitation for covered items, as defined in the Act and regardless of dollar value, contracting officers shall also include the full text of the special provision.

**Expiration:** This class deviation will remain in effect until it is incorporated into the HSAR or is otherwise rescinded.

**Attachments:**

- Attachment 1: HSAR Subpart 3025.72 Homeland Procurement Reform Act Requirements on Certain Clothing and Protective Equipment
- Attachment 2: Special Clause “3025.225-100 Homeland Procurement Reform Act – Covered Items”
- Attachment 3: Special Clause “3025.225-101 Homeland Procurement Reform Act – Small Business Requirements”
- Attachment 4: Special Clause “3025.225-102 Homeland Procurement Reform Act Certificate – Small Business Requirements”
- Attachment 5: Homeland Procurement Reform Act

**Additional Information:** Questions or comments about this class deviation may be directed to Shaundra Ford via email to [Shaundra.Ford@hq.dhs.gov](mailto:Shaundra.Ford@hq.dhs.gov).

Attachment 1: HSAR Subpart 3052.72 Homeland Procurement Reform Act Restrictions on  
Certain Clothing and Protective Equipment

3025.72	Homeland Procurement Reform Act Restrictions on Certain Clothing and Protective Equipment
3025.7200	Scope of subpart.
3025.7201	Definitions.
3025.7202	Requirements on certain clothing and protective equipment.
3025.7202-1	Requirements.
3025.7202-2	Waivers.
3025.7202-3	Reporting Requirements.
3025.7203	Solicitation provisions and contract clauses.

**Subpart 3025.72 Homeland Procurement Reform Act Requirements on Certain Clothing and Protective Equipment**

**3025.7200 Scope of subpart.**

This subpart contains requirements for the acquisition of certain clothing and protective equipment imposed by the Homeland Procurement Reform Act (Pub. L. 117-263, Div. G, Title LXXI, Subtitle B, §7112) on contracts, exercising of an option, and orders entered into on or after June 21, 2023.

**3025.7201 Definitions.**

As used in this subpart –

“Covered item,” as applied to an item described in (HSAR) 48 CFR 3025.7202-1, means

- (a) Footwear provided as part of a uniform;
- (b) Uniforms;
- (c) Holsters and tactical pouches;
- (d) Patches, insignia, and embellishments;
- (e) Chemical, biological, radiological, and nuclear protective gear;
- (f) Body armor components intended to provide ballistic protection for an individual, consisting of one or more of the following:
  - (i) Soft ballistic panels;
  - (ii) Hard ballistic plates; or
  - (iii) Concealed armor carriers worn over a uniform; or
  - (iv) External armor carriers worn over a uniform; and
- (g) Any other item of clothing or protective equipment as determined appropriate by the Secretary.

“Frontline operational component,” a means any of the following entities of the Department –

- (a) U.S. Customs and Border Protection;
- (b) U.S. Immigration and Customs Enforcement;
- (c) The United States Secret Service;
- (d) The Transportation Security Administration;
- (e) The Federal Protective Service;
- (f) The Federal Emergency Management Agency;

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- (g) The Federal Law Enforcement Training Centers; and
- (h) The Cybersecurity and Infrastructure Security Agency.

**3025.7202 Requirements for certain clothing and protective equipment.**

**3025.7202-1 Requirements.**

The following requirements implement the Homeland Procurement Reform Act, and they apply to all types of actions, orders, option exercises, and contracts.

- (a) Except as provided in subsection (HSAR) 48 CFR 3025.7202-2, contracting officers acquiring covered items for a frontline operational component shall require at least one-third of the value of each procurement of covered items be for covered items that are manufactured *or* supplied in the United States (U.S.) by entities that qualify as small business concerns as such term is described under section 3 of the Small Business Act (15 U.S.C. 632) to the maximum extent possible.
  - (1) Covered items shall only be *supplied* to the extent that the U.S. small business concern is –
    - (i) unable to manufacture covered items in the U.S.;
    - (ii) an entity registered with the System for Award Management (or successor system) administered by the General Services Administration; and
    - (iii) in compliance with ISO 9001:2015 of the International Organization for Standardization (or successor standard) or a standard determined appropriate by the Secretary to ensure the quality of products and adherence to applicable statutory and regulatory requirements.
  - (2) When one-third of the value of a procurement for covered items cannot be manufactured *or* supplied in the U.S. by small business concerns, contracting officers shall—
    - (i) document the efforts taken to identify small business concerns to manufacture or supply the covered item(s);
    - (ii) obtain review and approval of such documentation by the Head of the Contracting Activity; and
    - (iii) include such documentation in the contract file.
- (b) Each covered item with an insignia (such as any patch, badge, or emblem) and each insignia, if the covered item with such insignia or such insignia, as the case may be, is not produced, applied, or assembled in the United States, must be stored in a locked area.
  - (1) Pilferage or theft of such covered item with such insignia or such insignia occurring at any stage before delivery of such covered item with such insignia or such insignia shall be reported to the contracting officer and maintained in the contract file.

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Certain Clothing and Protective Equipment

- (2) Defective or unusable covered items with insignia or insignia shall be destroyed by the contractor in a manner that renders the item unusable with no possibility of reassembly.
- (i) Contracting officers shall identify a Government witness to verify destruction or identify an alternative method(s) of verification of destruction in the contract.
  - (ii) Destruction records must be provided to the contracting officer on a quarterly basis or contract expiration, whichever occurs first, and maintained by the contractor for three years after the creation of such records.
  - (iii) Destruction records must include—
    - (A) the date of such destruction,
    - (B) a description of the covered item with insignia or insignia destroyed,
    - (C) the quantity of the covered item with insignia or insignia destroyed, and
    - (D) the method of destruction.

**3025.7202-2 Waivers.**

- (a) In the case of a national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) or a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), the DHS Chief Procurement Officer may waive a requirement in 3025.7202-1(a) or (b) if the DHS Chief Procurement Officer determines there is an insufficient supply of a covered item that meets the requirement in either case.
- (b) When the waiver in paragraph (a) is used:
- (1) Only the DHS Chief Procurement Officer is authorized to make the determination.
  - (2) The supporting documentation for the DHS Chief Procurement Officer shall be prepared by the DHS Component(s) and:
    - (i) Include a written justification that identifies the—
      - (A) covered item(s) for which a waiver is required;
      - (B) national emergency or major disaster declaration necessitating the waiver;
      - (C) demand for the covered item(s); and
      - (D) supporting evidence that there is an insufficient supply of a compliant covered item.
    - (ii) Be concurred on by the Head of the Contracting Activity before submission to the DHS Chief Procurement Officer.

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- (3) The DHS Office of the Chief Procurement Officer will ensure the waiver is submitted to Congress within 60 days of approval by the DHS Chief Procurement Officer.

**3025.7202-3 Reporting Requirements.**

Not later than October 31<sup>st</sup> of each year, the Head of the Contracting Activity shall submit a report to the DHS Chief Procurement Officer on all instances in which a contractor has failed to meet deadlines for delivery of covered items and corrective actions taken by the Component in response to such instances.

**3025.7203 Contract clauses.**

- (a) Insert the clause at (HSAR) 48 CFR 3052.225-100, Homeland Procurement Reform Act—Covered Items in all solicitations and contracts, regardless of dollar value, when procuring any item covered under (HSAR) 48 CFR 3025.7202-1.
- (b) Insert the clause at (HSAR) 48 CFR 3052.225-101, Homeland Procurement Reform Act—Small Business Requirements in all solicitations and contracts, regardless of dollar value, when procuring any item covered under (HSAR) 48 CFR 3025.7202-1.
- (c) Insert the provision at (HSAR) 48 CFR 3052.225-102, Homeland Procurement Reform Act Certificate—Small Business Requirements in all solicitations, regardless of dollar value, when procuring any item covered under (HSAR) 48 CFR 3025.7202-1.

**3052.225-100 Homeland Procurement Reform Act – Covered Items.**

As prescribed in 3025.7203(a), insert the following clause:

HOMELAND PROCUREMENT REFORM ACT – COVERED ITEMS (JUNE 2023)

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

*Covered item*, as applied to an item described in subsection (b) of this clause, means –

- (1) Footwear provided as part of a uniform;
- (2) Uniforms;
- (3) Holsters and tactical pouches;
- (4) Patches, insignia, and embellishments;
- (5) Chemical, biological, radiological, and nuclear protective gear;
- (6) Body armor components intended to provide ballistic protection for an individual, consisting of one or more of the following:
  - (i) Soft ballistic panels;
  - (ii) Hard ballistic plates; or
  - (iii) Concealed armor carriers worn over a uniform; or
  - (iv) External armor carriers worn over a uniform; and
- (7) Any other item of clothing or protective equipment as determined appropriate by the Secretary.

*Frontline operational component*, as applied to an item described in subsection (b) of this clause, means any of the following entities of the Department of Homeland Security –

- (1) U.S. Customs and Border Protection;
- (2) U.S. Immigration and Customs Enforcement;
- (3) The United States Secret Service;
- (4) The Transportation Security Administration;
- (5) The Federal Protective Service;
- (6) The Federal Emergency Management Agency;
- (7) The Federal Law Enforcement Training Centers; and
- (8) The Cybersecurity and Infrastructure Security Agency.

(b) Each supplier of a covered item with an insignia (such as any patch, badge, or emblem) and each supplier of such an insignia, if the covered item with such insignia or such insignia, as the case may be, is not produced, applied, or assembled in the United States, shall—

- (1) store such covered item with such insignia or such insignia in a locked area; and
- (2) report to both the Contracting Officer and Contracting Officer’s Representative (COR) within 24 hours any pilferage or theft of such covered item with such insignia or such insignia occurring at any stage before delivery of such covered item with such insignia or such insignia.

(c) *Destruction Requirements.* The contractor shall destroy any such defective or unusable covered item with insignia or insignia in a manner that renders the covered item unusable with no possibility of reassembly.



Attachment 2: Special Clause “3052.225-100 Homeland Procurement Reform Act – Covered Items”

- (1) Destruction shall be verified by a Government witness or other approved method of verification as stated in the contract.
  - (2) Each destruction record shall include a certification by the contractor that the defective or unusable covered item with insignia or in insignia was destroyed in a manner that renders the covered item unusable with no possibility of reassembly.
  - (3) Records shall be maintained, for three years after the creation of such records, of such destruction that include the date of such destruction, a description of the covered item with insignia or insignia destroyed, the quantity of the covered item with insignia or insignia destroyed, and the method of destruction. Destruction records shall be provided to the Contracting Officer and COR on a quarterly basis or contract expiration, whichever occurs first.
- (d) *Late Deliveries*. The Contractor shall ensure covered items are delivered in accordance with the delivery timelines established in the contract. The contractor shall report all late deliveries to the Contracting Officer and COR, including the reason for the late delivery, for each fiscal year either not later than October 15<sup>th</sup> or contract expiration whichever occurs first.
- (e) *Subcontracts*. The Contractor shall insert this clause in all subcontracts for covered items and require subcontractors to include this clause in all lower tier subcontracts for covered items.

(End of clause)

Attachment 3: Special Clause “3052.225-101 Homeland Procurement Reform Act – Small Business Requirements”

**3052.225-101 Homeland Procurement Reform Act – Small Business Requirements.**

As prescribed in 3025.7203(b), insert the following clause:

HOMELAND PROCUREMENT REFORM ACT – SMALL BUSINESS REQUIREMENTS (JUNE 2023)

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

*Covered item*, as applied to an item described in subsection (b) of this clause, means –

- (1) Footwear provided as part of a uniform;
  - (2) Uniforms;
  - (3) Holsters and tactical pouches;
  - (4) Patches, insignia, and embellishments;
  - (5) Chemical, biological, radiological, and nuclear protective gear;
  - (6) Body armor components intended to provide ballistic protection for an individual, consisting of one or more of the following:
    - (i) Soft ballistic panels;
    - (ii) Hard ballistic plates; or
    - (iii) Concealed armor carriers worn over a uniform; or
    - (iv) External armor carriers worn over a uniform; and
  - (7) Any other item of clothing or protective equipment as determined appropriate by the Secretary.
- (b) The contractor shall ensure one-third of the value of covered items under the contract are manufactured *or* supplied in the United States (U.S.) by entities that qualify as small business concerns as such term is described under section 3 of the Small Business Act (15 U.S.C. 632).
- (c) If the Contractor is a U.S. small business concern or is providing a covered item of a U.S. small business concern, the contractor shall *supply* covered items only to the extent that such concern is –
- (1) unable to manufacture covered items in the U.S.;
  - (2) an entity registered with the System for Award Management (or successor system) administered by the General Services Administration; and
  - (3) in compliance with ISO 9001:2015 of the International Organization for Standardization (or successor standard) or other standard identified in the solicitation.

(End of clause)

Attachment 4: Special Provision “3052.225-102 Homeland Procurement Reform Act – Small Business Requirements”

**3052.225-102 Homeland Procurement Reform Act Certificate – Small Business Requirements.**

As prescribed in 3025.7203(c), insert the following clause:

HOMELAND PROCUREMENT REFORM ACT CERTIFICATE – SMALL BUSINESS REQUIREMENTS  
(JUNE 2023)

- (a) The Offeror certifies that each covered item listed in paragraph (b) is provided by an entity(ies) that qualifies as a small business concern as such term is described under section 3 of the Small Business Act (15 U.S.C. 632). The offeror also certifies that small business concerns that are *supplying* covered items are unable to manufacture such items in the U.S.
- (b) The Offeror shall identify below each small business providing covered items under the contract as follows:

Name of Small Business	Manufacturer or Supplier	Confirmation Small Business Meets the requirements of (b)(1)-(3) Yes/No	Covered Item(s)	Total Dollar Value of Covered Item(s)	Total Percentage Value of Covered Item(s) Manufactured or Supplied in the U.S.
Total					

[List as necessary]

(End of provision)