

## **Subchapter 3025.71 Make PPE in America Act Restrictions on Foreign Acquisition**

This subchapter contains restrictions on the acquisition of certain personal protective equipment imposed by the Make PPE in America Act, Subtitle C of the Infrastructure Investment and Jobs Act (Pub. L. 117-58) on contracts, exercising of an option, and orders entered into on or after February 14, 2022. See also HSAR Class Deviation 23-01 Implementation of Make PPE in America Act.

### **3025.7101 Definitions.**

As used in this subchapter (see HSAR Class Deviation 23-01 Implementation of Make PPE in America Act) -

*“Component,”* as applied to an item described in (HSAR) 48 CFR 3025.7102-1, means an article, material, or supply incorporated directly into personal protective equipment.

*“Domestic personal protective equipment,”* as applied to an item described in (HSAR) 48 CFR 3025.7102-1, means personal protective equipment, including the materials and components thereof, that is grown, reprocessed, reused, or produced in the United States.

*“Foreign-made domestic personal protective equipment,”* as applied to an item described in (HSAR) 48 CFR 3025.7102-2, means personal protective equipment that is assembled outside the United States containing only materials and components that are grown, reprocessed, reused, or produced in the United States.

*“Foreign personal protective equipment”* means personal protective equipment other than domestic personal protective equipment or foreign-made domestic personal protective equipment.

*“Personal protective equipment,”* as applied to an item described in (HSAR) 48 CFR 3025.7102-1, means surgical masks, respirator masks and powered air purifying respirators and required filters, face shields and protective eyewear, gloves, disposable and reusable surgical and isolation gowns, head and foot coverings, and other gear or clothing used to protect an individual from the transmission of disease.

*“United States,”* as applied to an item described in (HSAR) 48 CFR 3025.7102-1, means the 50 States, the District of Columbia, and the possessions of the United States.

### **3025.7102 Restrictions on certain personal protective equipment.**

#### **3025.7102-1 Restrictions.**

(b) To meet the contract period of performance requirements at HSAR 3025.7102-1(b) (see HSAR Class Deviation 23-01 Implementation of Make PPE in America Act):

(1) Strategic Sourcing Vehicles (SSVs) shall be used to acquire the personal protective equipment identified at HSAR 3025.7102-1(a) unless an exception or approved waiver applies (see HSAM 3017.7102(b) and (c)) regardless of the dollar value of the action,

including micro-purchases. However, if using an exception or approved waiver identified in DHS Directive 060-01 *Development and Use of Strategic Sourcing Contract Vehicles* for covered PPE, contracting activities are still required to observe HSAR Class Deviation 23-01 concerning the Make PPE in America Act.

- (i) An indefinite-delivery contract type (see FAR 16.5) shall be used for all SSVs that include personal protective equipment as defined at HSAR 3025.7101(e); and
- (ii) The base period of performance for all SSVs for such contracts shall be a minimum of 2 years.
- (iii) TSA shall continue to use the Nitrile Gloves II BPA to fulfill nitrile glove requirements until the BPA expires and the TSA-specific nitrile glove requirements are added to the Department-wide PPE Safety Stock contract.

### **3025.7102-2 Exceptions.**

(d) *Documentation.* When the exception at HSAR 3025.7102-2(a) or HSAR 3025.7102-2(b)(2) is applicable to the procurement, the determination shall be documented using either Appendix AG Template for Individual or Class Determination and Findings (D&F) for Domestic Nonavailability Exceptions to the Make PPE in America Act or Appendix AH Template for Determination and Findings (D&F) for Unreasonable Cost Exceptions to the Make PPE in America Act, respectively. The D&F shall be concurred by the HCA, approved by the CPO, and reviewed by the MIAO before award is made. The contracting officer shall submit the request for CPO approval using the DHS Buy American Reporting Tool. Once approved by the CPO, APL will submit the determination to the MIAO for review. APL will notify the contracting officer when the MIAO review is complete and provide a copy of the signed D&F. The D&F shall be prepared by the requiring office in coordination with the contracting activity and document that the personal protective equipment is necessary to meet the immediate needs of a public health emergency, to include the prevention of a public health emergency, *and* —

- (1) The market research activities undertaken to determine that neither a domestic nor a BAA or TAA compliant item(s), if applicable, of personal protective equipment is available. This includes identification of:
  - (i) Market research methods used to identify domestic personal protective equipment capable of satisfying the requirement;
  - (ii) Domestic personal protective equipment considered and a detailed explanation as to why the domestic item(s) does not meet the needs of the Government;
  - (iii) Foreign-made domestic personal protective equipment considered and a detailed explanation as to why the foreign-made domestic item(s) does not meet the needs of the Government;
  - (iv) BAA compliant personal protective equipment considered, and a detailed explanation as to why the BAA compliant item(s) does not meet the needs of the Government, if the BAA is applicable to the requirement;

(v) 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

(vi) Foreign personal protective equipment considered, including country of origin, and a detailed explanation as to why the foreign end product(s) is the only item that meets the needs of the Government; or

(2) The results of the price evaluation used to determine that acquisition of domestic personal protective equipment, foreign-made domestic personal protective equipment, or BAA compliant personal protective equipment, if applicable, would result in an unreasonable cost to the Government based on review of market pricing.

### **3025.7103 Solicitation provisions and contract clauses.**

The following provisions and clauses apply to the acquisition of personal protective equipment (see also HSAR Class Deviation 23-01 Implementation of Make PPE in America Act) –

(a) Insert the clause at 3052.225-98, Made in America—Personal Protective Equipment, in solicitations and contracts, regardless of dollar value, when procuring personal protective equipment.

(b) Insert the provision at (HSAR) 48 CFR 3052.225-99, Made in America Certificate—Personal Protective Equipment, in solicitations containing the clause at 3052.225-98.

### **3025.7104 Solicitation requirements.**

(a) Contracting officers shall require offerors to submit pricing in lots per personal protective equipment item. Each lot shall be broken into sub-lots based on the preference for domestic personal protective equipment using the following example:

“LOT 1: Nitrile Gloves - 4 MIL, medical grade, powder free, blue, ambidextrous (Sizes: Small, Med, Large, XL, XXL)

Lot 1A: Nitrile gloves (Make PPE in America Act Compliant – Domestic)

Lot 1B: Nitrile gloves (Make PPE in America Act Compliant – Foreign-made Domestic)

Lot 1C: Nitrile gloves (BAA Compliant or TAA Compliant as applicable)

LOT 2: Nitrile Gloves - 6 MIL, medical grade, powder free, black, ambidextrous (Sizes: Small, Med, Large, XL, XXL)

Lot 2A: Nitrile gloves (Make PPE in America Act Compliant – Domestic)

Lot 2B: Nitrile gloves (Make PPE in America Act Compliant – Foreign-made Domestic)

Lot 2C: Nitrile gloves (BAA Compliant or TAA Compliant as applicable)

There are two (2) different and distinct lots under this solicitation. Within each lot, there are three (3) sub-lots based on the preference for domestic personal protective equipment as required by HSAR 3052.225-98, Made in America—Personal Protective Equipment and HSAR 3052.225-99, Made in America Certificate—Personal Protective Equipment. The government's priority is to obtain domestically manufactured personal protective equipment. Offers in the first sub-lot, i.e., domestic personal protective equipment, will be considered first. Thereafter, a preference will be given to offers in the second sub-lot, i.e., foreign-made domestic personal protective equipment. If it is determined that neither domestic personal protective equipment nor foreign-made domestic personal protective equipment are available due to nonavailability or unreasonable cost, offers will be notified by the contracting officer of such determination and offers in the third sub-lot will be considered subject to the application of the [BAA or TAA as applicable]. Failure to clearly identify which lot and sub-lot you are submitting your proposal/quotation against will result in the rejection of a proposal/quotation.”

(b) In the event it is determined that neither domestic personal protective equipment nor foreign-made domestic personal protective equipment are available due to nonavailability or unreasonable cost, the contracting officer shall complete the applicable documentation required at HSAM 3025.7102-2(d). The contracting officer will notify all offerors of the CPO's determination after APL has notified the contracting officer the MIAO review is complete and provided a copy of the signed D&F.