



UNITED STATES DEPARTMENT OF COMMERCE  
Chief Financial Officer and  
Assistant Secretary for Administration  
Washington, D.C. 20230

**PROCUREMENT MEMORANDUM 2025-17**

**ACTION**

**MEMORANDUM FOR:** Senior Bureau Procurement Officials

**FROM:** Olivia J. Bradley  
Senior Procurement Executive and  
Director for Acquisition Management

**SUBJECT:** Use of Federal Acquisition Regulation Clause 52.225-8 and  
Modifications for Duty-Related Costs

**Background**

In accordance with FAR 25.901, “United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. Agencies must use these exemptions when the anticipated savings to appropriated funds will outweigh the administrative costs associated with processing required documentation.” Exemptions from these duties are identified in FAR 25.903 and are as follows:

- (a) Subchapters VIII and X of Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS) (see 19 U.S.C. § 1202) list articles for which exemptions from duty may be obtained when imported into the customs territory of the United States under a Government contract. For certain of these supplies, the contracting agency must certify to the Commissioner of Customs that they are for the purpose stated in the HTSUS (see 19 CFR 10.102-104, 10.114, and 10.121 and 15 CFR Part 301 for requirements and formats).
- (b) Supplies (excluding equipment)<sup>1</sup> for Government-operated vessels or aircraft may be withdrawn from any customs-bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, free of duty and internal revenue tax as provided in 19 U.S.C. §§ 1309 and 1317. The contracting activity must cite this authority on the appropriate customs form when making purchases (see 19 CFR 10.59 - 10.65).

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<sup>1</sup> This exclusion does not include equipment for Government-operated vessels or aircraft, merely supplies for these crafts.

When duty-free entry may be obtained in accordance with FAR 25.903(a) and the conditions identified in FAR 25.1101(e) have been met, FAR clause 52.225-8 shall be inserted in solicitations and contracts.

## Purpose

This procurement memorandum provides standard guidance for using FAR clause 52.225-8 to obtain duty-free entry for certain supplies exempted under FAR 25.903 and how to process contract modifications for duty-related costs when FAR clause 52.225-8 is not in the contract<sup>2</sup>.

## Required Actions

1. Effective immediately, contracting officers shall perform the following activities prior to solicitation or prior to contract award if an action does not require a solicitation (sole source, etc.) for a contract that includes FAR clause 52.225-8:
  - a. Identify the Heading/Subheading, Statistical Suffix, and Article Description of the item for which duty-free entry is contemplated in subchapter VIII or X of Chapter 98 of the HTSUS. These subchapters are included in Attachment A and current version is maintained by the U.S. International Trade Commission here: [HTSUS Chapter 98](#).
  - b. Review any applicable U.S. note for the item.
  - c. If the value of the contract does not exceed the simplified acquisition threshold (SAT), review the administrative cost calculation found in Attachment B. If the administrative cost calculation is higher than the anticipated savings from duty-free entry, do not proceed with inclusion of FAR clause 52.225-8 in accordance with FAR 25.1101(e).
  - d. If the identified item is under any Subheading other than 9810.00.60, "Instruments and apparatus," provide the Heading/Subheading, Statistical Suffix, and Article Description identified in part 1(a) above and a copy of any applicable U.S. note identified in part 1(b) above, to the Head of the Contracting Activity or designee. After approval<sup>3</sup> of the action and completion of any required activities identified in the U.S Notes, contracting officers may proceed with solicitation and award.<sup>4</sup>
  - e. Special procedures apply if the identified item is under Subheading 9810.00.60, "Instruments and apparatus."
    - i. Subheading 9810.00.60 only applies to items entered for the use of any nonprofit institution, whether public or private, established for educational or scientific purposes.

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<sup>2</sup> "Contracts" has the meaning as defined in FAR 2.101 and includes blanket purchase agreements, orders under blanket purchase agreements, and orders under indefinite delivery, indefinite quantity contracts.

<sup>3</sup> See the section entitled "Approvals" for more information on the required format.

<sup>4</sup> A solicitation may be issued with the clause prior to approval.

- ii. HTSUS Chapter 98, subchapter X, U.S. Note 1, provides that items under subheading 9810.00.60 must be exclusively for the use of institutions involved and not for distribution, sale or other commercial use within 5 years after being entered.<sup>56</sup>
  - iii. If the contracting officer believes the conditions of subheading 9810.00.60 are met, provide a copy of the requirement document (statement of work, performance work statement, statement of objectives, etc.), the Heading/Subheading, Statistical Suffix, and Article Description identified in part 1(a) above, and a copy of any applicable U.S. note identified in part 1(b) above, to the Head of the Contracting Activity or designee, with a copy to OAM, before submitting the required form ITA-338P as stated in HTS Chapter 98, subchapter X, U.S. Note 6.<sup>7</sup> After approval of the action and completion of any required activities identified in the U.S Notes, the contracting officer may proceed with solicitation and award.
- 2. Effective immediately, contracting officers shall perform the following activities prior to adding FAR clause 52.225-8 to a previously awarded contract:
  - a. If an item on the HTSUS has been identified after award of a contract and a modification to add clause 52.225-8 is being contemplated, the following information shall be submitted to the Head of the Contracting Activity or designee: requirements document (statement of work, performance work statement, etc.), Heading/Subheading, Statistical Suffix, and Article Description identified in part 1(a) above, and a copy of any applicable U.S. note identified in part 1(b) above. If the identified item is under Subheading is 9810.00.60, "Instruments and apparatus," this notification shall occur before submitting the required form ITA-338P as identified in U.S. Note 6 and 15 CFR Part 301, and described in part 1(e) above.
  - b. After approval of the action and completion of any required activities identified in the U.S Notes, the contracting officer may proceed with including the clause in the contract.
- 3. Effective immediately, contracting officers shall perform the following activities prior to issuing a contract modification based on duty-related costs:

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<sup>5</sup> See also 15 C.F.R. 301.4(a)(3)

<sup>6</sup> See also [ITA-338P](#), section 7C, which requires the submitter to provide the following Certification of intended use: "I hereby [sic]certify that there will not be any use of the foreign instrument by or for the primary benefit of any Commercial (for-profit) entity within 5 years after entry of the foreign instrument into the United States customs territory."

<sup>7</sup> See also 15 C.F.R. Part 301.

- a. Any modification involving duty-related costs<sup>8</sup> shall be submitted for approval to Head of the Contracting Activity or designee.
- b. After approval of the modification, contracting officers may proceed with issuance of the modification.

### **Approvals**

1. Approvals obtained for new solicitations or contract awards or modifications adding FAR clause 52.225-8 should include language substantially similar to the following:

“This award or portion of award has been found to be exempt from duty in accordance with Federal Acquisition Regulation 25.903(a) and is approved to proceed.”

2. Approvals obtained for modifications should include language substantially similar to the following:

“This modification includes payment of a duty-related cost and is approved to proceed.”

### **Effective Date**

This procurement memorandum is effective immediately and remains in effect until rescinded.

### **Questions**

Please direct any questions regarding this Procurement Memorandum to OAM\_Mailbox@doc.gov.

Attachment A – Subchapters VIII and X of Chapter 98 of the Harmonized Tariff Schedule of the United States (19 U.S.C. § 1202)

Attachment B – Administrative Cost Calculation

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<sup>8</sup> This includes payment of duty-related costs in accordance with FAR Clause 52.229-3.