

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 2001–27; Introduction**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of interim rule.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–27. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available

via the Internet at <http://www.acqnet.gov/far>.

**DATES:** For effective date and comment date, see separate document which follows.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2001–27, FAR case 2004–027. Interested parties may also visit our Web site at <http://www.acqnet.gov/far>.

Item	Subject	FAR case	Analyst
I .....	Free Trade Agreements—Australia and Morocco .....	2004–027	Davis.

**SUPPLEMENTARY INFORMATION:** A summary of the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to the specific item number and subject set forth in the document following this item summary. FAC 2001–27 amends the FAR as specified below:

**Free Trade Agreements—Australia and Morocco (FAR case 2004–027)**

This interim rule allows contracting officers to purchase the products of Australia and Morocco without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated Free Trade Agreements with Australia and Morocco, which go into effect January 1, 2005, according to Public Laws 108–286 and 108–302. These Agreements join the North American Free Trade Agreement (NAFTA) and the Chile and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Australian Free Trade Agreement is \$58,550 (the same as other Free Trade Agreements to date), but the threshold for applicability of the Morocco Free Trade Agreement is \$175,000. Because of the short statutory time frame, this is an interim rule. Also in this rule are changes requested by the U.S. Trade Representative, in the list of Least Developed Countries, and changes in terminology on how the FAR uses the terms “designated country” and “Trade Agreements Act.” Some technical changes are also included.

Dated: December 22, 2004.

**Laura Auletta,**  
*Director, Contract Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2001–27 is issued under the authority of

the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–27 is effective January 1, 2005.

Dated: December 21, 2004.

**Lt. Col. Vincent Feck,**  
*Deputy Director (Operations), Defense Procurement and Acquisition Policy.*

Dated: December 22, 2004.

**David A. Drabkin,**  
*Senior Procurement Executive, General Services Administration.*

Dated: December 21, 2004.

**Scott Thompson,**  
*Acting Deputy Chief Acquisition Officer, National Aeronautics and Space Administration.*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 5, 6, 9, 12, 14, 17, 22, 25, and 52**

**[FAC 2001–27; FAR Case 2004–027]**

**RIN 9000–AK09**

**Federal Acquisition Regulation; Free Trade Agreements—Australia and Morocco**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement new Free Trade Agreements with Australia and Morocco as approved by Congress (Public Laws 108–286 and 108–302). These Free Trade Agreements are scheduled to go into effect January 1, 2005.

The interim rule also establishes a table of services excluded from the coverage of the various trade agreements, corrects the threshold for Canadian services, revises the list of Least Developed Countries, revises FAR terminology relating to international trade agreements and the Trade Agreements Act (TAA), and revises the FAR clauses that implement application of the Buy American Act (41 U.S.C. 10a, 10b, 10b–1, and 10c) and trade agreements to construction material.

**DATES:** *Effective Date:* January 1, 2005.

*Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before February 28, 2005, to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2001–27, FAR case 2004–027, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web site: <http://www.acqnet.gov/far/ProposedRules/>

*proposed.htm*. Click on the FAR case number to submit comments.

- E-mail: [farcase.2004-027@gsa.gov](mailto:farcase.2004-027@gsa.gov). Include FAC 2001-27, FAR case 2004-027, in the subject line of the message.
- Fax: (202) 501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2001-27, FAR case 2004-027, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-27, FAR case 2004-027.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

*New Free Trade Agreements.* This rule amends FAR Part 25 and the clauses at 52.212-3, Offeror Representations and Certifications—Commercial Items, 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, 52.225-5, Trade Agreements, 52.225-6, Trade Agreements Certificate, 52.225-9, Buy American Act—Construction Materials, and 52.225-11, Buy American Act—Construction Materials under Trade Agreements, and 52.225-12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, to implement new Free Trade Agreements with Australia and Morocco, as approved by Congress (Public Laws 108-286 and 108-302). The Free Trade Agreements with Australia and Morocco waive the applicability of the Buy American Act for some foreign supplies and construction materials from Australia and Morocco, and specify procurement procedures designed to ensure fairness, applicable to the acquisition of supplies and services.

##### *Other related revisions.*

- *Table of excluded services.* The rule includes a table of excluded services to improve clarity.
- *NAFTA threshold for Canadian services.* The rule corrects the NAFTA

threshold for services from Canada from \$25,000 to \$58,550 (FAR 25.402(b)).

- *Terminology.*

1. The TAA and the WTO Agreement on Government Procurement. The FAR currently equates the term “Trade Agreements Act” with the Agreement on Government Procurement (meaning the World Trade Organization Government Procurement Agreement (“WTO GPA”) (see FAR 25.400(a)(1)). The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) (TAA) is not synonymous with the WTO GPA. The TAA provides authority for the President (designated by Executive Order 12260 of December 31, 1980 to the United States Trade Representative (USTR)) to waive discriminatory purchasing requirements (such as the Buy American Act), designate eligible countries (including least developed countries), and bar procurement from non-designated countries. It does not contain thresholds or the terms of the various trade agreements. The rule substitutes the term “World Trade Organization Government Procurement Agreement” in all places in the FAR where the term “Trade Agreements Act” is currently used to mean the WTO GPA.

2. “Designated country,” “WTO GPA country,” and “least developed country.” The list of designated countries at FAR 25.001 is currently a combination of WTO members subject to the WTO GPA (WTO GPA countries) and certain least developed countries for which the USTR has waived discriminatory purchasing requirements, in accordance with section 301 of the TAA. The rule redefines “designated country” to include WTO GPA countries, Free Trade Agreement countries, least developed countries, and Caribbean Basin countries. Free Trade Agreement countries and Caribbean Basin countries are now also designated countries. Each of these terms will retain a separate definition, because in some instances, the regulation does not apply to all designated countries, but only some of the specific subsets.

- *FAR clauses that implement application of the Buy American Act and trade agreements to construction material.*

1. Caribbean Basin construction material. The **Federal Register** notices issued by the USTR under the Caribbean Basin Trade Initiative state that “products” of the listed Caribbean Basin countries shall continue to be treated as “eligible products” (unless excluded from duty-free treatment under 19 U.S.C. 2703(b)). To be consistent with the statutory definition at 19 U.S.C. 2518(4), this rule modifies the definition

of “eligible product” to include “construction material” and modifies the construction clauses that implement the trade agreements to extend nondiscriminatory treatment to all designated country construction material, including Caribbean Basin country construction material.

2. Cost of components. The rule makes a technical correction to the definition of “cost of components” as contained in the clauses that apply Buy American Act and trade agreements to construction material (52.225-9, Buy American Act—Construction Materials, and 52.225-11, Buy American Act—Construction Materials under Trade Agreements). When applied to components of construction material, the definition must be modified in the second paragraph to delete the term “end product” and replace it with the term “construction material.” Note that the definition of the term “component” in these clauses has already been so modified.

- *Revising the list of Least Developed Countries.* The U.S. Trade Representative has requested that the list of Least Developed Countries (LDC) be revised. These countries are included within the definition of “designated country”. This list has been approved by the Trade Policy Staff Committee. The TAA allows USTR (pursuant to authority delegated from the President in Executive Order 12260) to waive the purchasing prohibition and discriminatory purchasing requirements for LDCs. As defined in 19 U.S.C. 2518, a “least developed country” is “any country on the United Nations General Assembly list of least developed countries.” The countries designated as eligible countries under the TAA are listed in the FAR to inform contracting officers of countries that are eligible to participate in Federal Government procurement. Botswana is no longer designated as an LDC by the United Nations. Further, the following countries have been designated as LDCs by the United Nations, but are not currently included in the FAR list: Afghanistan; Angola; Burma (Myanmar); Cambodia; Democratic Republic of Congo; Eritrea; Ethiopia; Laos; Liberia; Madagascar; Mauritania; Senegal; Solomon Islands; Sudan; East Timor; and Zambia. Therefore, the USTR has removed Botswana and included the additional LDCs, with the exceptions of Burma (Myanmar), Liberia and Sudan, which are subject to United States economic sanctions.

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 rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the products of Australia and Morocco and Caribbean Basin country construction material, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions that are set aside for small businesses are exempt. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 5, 6, 9, 12, 14, 17, 22, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-27, FAR case 2004-027), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the provisions at FAR 52.212-3, 52.225-4, 52.225-6, and 52.225-11 regarding the paperwork burdens previously approved under OMB Control Numbers 9000-0130, 9000-0025, and 9000-0141. The impact is negligible.

## D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Free Trade Agreements with Australia and Morocco, as approved by Congress (Public Laws 108-286 and 108-302), are scheduled to go into effect January 1, 2005. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

## List of Subjects in 48 CFR Parts 5, 6, 9, 12, 14, 17, 22, 25, and 52

Government procurement.

Dated: December 22, 2004.

**Laura Auletta,**

*Director, Contract Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 6, 9, 12, 14, 17, 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 6, 9, 12, 14, 17, 22, 25, and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Amend section 5.202 by revising paragraph (a)(12) to read as follows:

### 5.202 Exceptions.

\* \* \* \* \*

(a) \* \* \*

(12) The proposed contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States and its outlying areas, and only local sources will be solicited. This exception does not apply to proposed contract actions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see Subpart 25.4);

\* \* \* \* \*

### 5.203 [Amended]

■ 3. Amend section 5.203 in the first sentence of paragraph (h) by removing “subject to the Trade Agreements Act” and adding “covered by the World Trade Organization Government Procurement Agreement” in its place.

■ 4. Amend section 5.301 by revising paragraph (a)(1); and removing from paragraph (c) “subject to the Trade Agreements Act,” and adding “covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement,” in its place. The revised text reads as follows:

### 5.301 General.

(a) \* \* \*

(1) Covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see Subpart 25.4); or

\* \* \* \* \*

## PART 6—COMPETITION REQUIREMENTS

### 6.303-1 [Amended]

■ 5. Amend section 6.303-1 by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

## PART 9—CONTRACTOR QUALIFICATIONS

■ 6. Amend section 9.205 by revising paragraph (b) to read as follows:

### 9.205 Opportunity for qualification before award.

\* \* \* \* \*

(b) The activity responsible for establishing a qualification requirement must keep any list maintained of those already qualified open for inclusion of additional products, manufacturers, or other potential sources.

## PART 12—ACQUISITION OF COMMERCIAL ITEMS

### 12.205 [Amended]

■ 7. Amend section 12.205 by removing from paragraph (c) “subject to the Trade Agreements Act” and adding “covered by the World Trade Organization Government Procurement Agreement” in its place.

## PART 14—SEALED BIDDING

■ 8. Amend section 14.409-1 by revising the introductory text of paragraph (a)(2) to read as follows:

### 14.409-1 Award of unclassified contracts.

(a)(1) \* \* \*

(2) For acquisitions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see 25.408(a)(5)), agencies must include in notices given unsuccessful bidders from World Trade Organization Government Procurement Agreement or Free Trade Agreement countries—

\* \* \* \* \*

## PART 17—SPECIAL CONTRACTING METHODS

■ 9. Amend section 17.203 by revising paragraph (h) to read as follows:

### 17.203 Solicitations.

\* \* \* \* \*

(h) Include the value of options in determining if the acquisition will exceed the World Trade Organization Government Procurement Agreement or Free Trade Agreement thresholds.

## PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### 22.1503 [Amended]

■ 10. Amend section 22.1503 by removing from the end of paragraph (b)(4) “(see 25.403(b))” and adding “(see 25.402(b))” in its place.

**PART 25—FOREIGN ACQUISITION**

■ 11. Amend section 25.003 by revising the definitions “Designated country”, “Designated country end product”, “Eligible product”, and “Free Trade Agreement country”; and adding the definitions “Least developed country”, “Least developed country end product”, “World Trade Organization Government Procurement Agreement (WTO GPA) country”, and “WTO GPA country end product” to read as follows:

**25.003 Definitions.**

\* \* \* \* \*

*Designated country* means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia);

or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

*Designated country end product* means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

\* \* \* \* \*

*Eligible product* means a foreign end product, construction material, or

service that, due to applicability of a trade agreement to a particular acquisition, is not subject to discriminatory treatment.

\* \* \* \* \*

*Free Trade Agreement country* means Australia, Canada, Chile, Mexico, Morocco, or Singapore.

\* \* \* \* \*

*Least developed country* means any of the following countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia.

*Least developed country end product* means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

\* \* \* \* \*

*World Trade Organization Government Procurement Agreement (WTO GPA) country* means any of the following countries: Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom.

*WTO GPA country end product* means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials

from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

**25.204 [Amended]**

■ 12. Amend section 25.204 by removing from paragraph (a) “excepted under the Trade Agreements Act or” and adding “covered by the WTO GPA or a” in its place.

■ 13. Revise section 25.400 to read as follows:

**25.400 Scope of subpart.**

(a) This subpart provides policies and procedures applicable to acquisitions that are covered by—

(1) The World Trade Organization Government Procurement Agreement (WTO GPA), as approved by Congress in the Uruguay Round Agreements Act (Pub. L. 103-465);

(2) Free Trade Agreements (FTA), consisting of—

(i) NAFTA (the North American Free Trade Agreement, as approved by Congress in the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note));

(ii) Chile FTA (the United States-Chile Free Trade Agreement, as approved by Congress in the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108-77));

(iii) Singapore FTA (the United States-Singapore Free Trade Agreement, as approved by Congress in the United States-Singapore Free Trade Agreement Implementation Act (Pub. L. 108-78));

(iv) Australia FTA (the United States—Australia Free Trade Agreement, as approved by Congress in the United States—Australia Free Trade Agreement Implementation Act (Pub. L. 108-286); and

(v) Morocco FTA (The United States—Morocco Free Trade Agreement, as approved by Congress in the United States—Morocco Free Trade Agreement Implementation Act (Pub. L. 108-302);

(3) The least developed country designation made by the U.S. Trade Representative, pursuant to the Trade Agreements Act (19 U.S.C. 2511(b)(4)), in acquisitions covered by the WTO GPA;

(4) The Caribbean Basin Trade Initiative (CBTI) (determination of the U.S. Trade Representative that end products or construction material granted duty-free entry from countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq.*), with the exception of Panama, must be treated as eligible products in acquisitions covered by the WTO GPA);

(5) The Israeli Trade Act (the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area

Implementation Act of 1985 (19 U.S.C. 2112 note)); or

(6) The Agreement on Trade in Civil Aircraft (U.S. Trade Representative waiver of the Buy American Act for signatories of the Agreement on Trade in Civil Aircraft, as implemented in the Trade Agreements Act of 1979 (19 U.S.C. 2513)).

(b) For application of the trade agreements that are unique to individual agencies, see agency regulations.

■ 14. Amend section 25.401 by removing from paragraph (a)(2) “, including all services purchased in support of military forces located overseas”; removing from

paragraph (a)(5) “(but see 6.303–1(d))”; and revising paragraph (b) to read as follows:

**25.401 Exceptions.**

\* \* \* \* \*

(b) In the World Trade Organization Government Procurement Agreement (WTO GPA) and each FTA, there is a U.S. schedule that lists services that are excluded from that agreement in acquisitions by the United States. Acquisitions of the following services are excluded from coverage by the U.S. schedule of the WTO GPA or an FTA as indicated in this table:

The service (Federal Service Codes from the Federal Procurement Data System Product/Service Code Manual are indicated in parentheses for some services.)	WTO GPA	NAFTA and Chile FTA	Singapore FTA	Australia and Morocco FTA
(1) All services purchased in support of military services overseas. ....	X	X	X	X
(2) (i) Automatic data processing (ADP) telecommunications and transmission services (D304), except enhance ( <i>i.e.</i> , value-added) telecommunications services..	X	X	.....	.....
(ii) ADP teleprocessing and timesharing services (D305), telecommunications network management services (D316), automated news services, data services or other information services (D317), and other ADP and telecommunications services (D399).	X	X	.....	.....
(iii) Basic telecommunications network services ( <i>i.e.</i> , voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services, but not information services, as defined in 47 U.S.C. 153(20))..	*	*	X	X
(3) Dredging .....	X	X	X	X
(4) (i) Operation and management contracts of certain Government or privately owned facilities used for Government purposes, including Federally Funded Research and Development Centers.	X	.....	X	.....
(ii) Operation of all Department of Defense, Department of Energy, or the National Aeronautics and Space Administration facilities; and all Government-owned research and development facilities or Government-owned environmental laboratories.	**	X	**	X
(5) Research and development .....	X	X	X	X
(6) Transportation services (including launching services, but not including travel agent services—V503).	X	X	X	X
(7) Utility services .....	X	X	X	X
(8) Maintenance, repair, modification, rebuilding and installation of equipment related to ships (J019).	.....	X	.....	X
(9) Nonnuclear ship repair (J998) .....	.....	X	.....	X

\*NOTE 1. Acquisitions of the services listed at (2)(iii) of this table are a subset of the excluded services at (2)(i) and (ii), and are therefore not covered under the WTO GPA.

\*\*NOTE 2. Acquisitions of the services listed at (4)(ii) of this table are a subset of the excluded services at (4)(i), and are therefore not covered under the WTO GPA.

■ 15. Revise section 25.402 to read as follows:

**25.402 General.**

(a)(1) The Trade Agreements Act (19 U.S.C. 2501, *et seq.*) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as being a

least developed country. The President has delegated this waiver authority to the U.S. Trade Representative. In acquisitions covered by the WTO GPA, Free Trade Agreements, or the Israeli Trade Act, the USTR has waived the Buy American Act and other discriminatory provisions for eligible products. Offers of eligible products receive equal consideration with domestic offers.

(2) The contracting officer shall determine the origin of services by the

country in which the firm providing the services is established. See Subpart 25.5 for evaluation procedures for supply contracts covered by trade agreements.

(b) The value of the acquisition is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years. The various thresholds are summarized as follows:

Trade agreement	Supply contract (equal to or ex- ceeding)	Service contract (equal to or ex- ceeding)	Construction contract (equal to or exceeding)
WTO GPA .....	\$175,000	\$175,000	\$6,725,000
FTAs:			
NAFTA:			
—Canada .....	25,000	58,550	7,611,532
—Mexico .....	58,550	58,550	7,611,532
Chile FTA .....	58,550	58,550	6,725,000
Singapore FTA .....	58,550	58,550	6,725,000
Australia FTA .....	58,550	58,550	6,725,000
Morocco FTA .....	175,000	175,000	6,725,000
Israeli Trade Act .....	50,000	.....	.....

■ 16. Amend section 25.403 by revising the section heading and paragraphs (a), (b)(1) introductory text, (b)(3), and (c)(1) to read as follows:

**25.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.**

(a) Eligible products from WTO GPA and FTA countries are entitled to the nondiscriminatory treatment specified in 25.402(a)(1). The WTO GPA and FTAs specify procurement procedures designed to ensure fairness (see 25.408).

(b) *Thresholds.* (1) To determine whether the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase) is covered by the WTO GPA or an FTA, calculate the estimated acquisition value as follows:

\* \* \* \* \*

(3) If, in any 12-month period, recurring or multiple awards for the same type of product or products are anticipated, use the total estimated value of these projected awards to determine whether the WTO GPA or an FTA applies. Do not divide any acquisition with the intent of reducing the estimated value of the acquisition below the dollar threshold of the WTO GPA or an FTA.

(c) *Purchase restriction.* (1) Under the Trade Agreements Act (19 U.S.C. 2512), in acquisitions covered by the WTO GPA, acquire only U.S.-made or designated country end products or U.S. or designated country services, unless offers for such end products or services are either not received or are insufficient to fulfill the requirements. This purchase restriction does not apply below the WTO GPA threshold for supplies and services, even if the acquisition is covered by an FTA.

**25.405 [Removed]**

■ 17. Remove section 25.405.

**25.404 [Redesignated as 25.405]**

■ 18. Section 25.404 is redesignated as section 25.405 and revised; and a new

section 25.404 is added to read as follows:

**25.404 Least developed countries.**

For acquisitions covered by the WTO GPA, least developed country end products, construction material, and services must be treated as eligible products.

**25.405 Caribbean Basin Trade Initiative.**

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions covered by the WTO GPA, Caribbean Basin country end products, construction material, and services must be treated as eligible products.

■ 19. Amend section 25.406 by revising the first sentence to read as follows:

**25.406 Israeli Trade Act.**

Acquisitions of supplies by most agencies are covered by the Israeli Trade Act, if the estimated value of the acquisition is \$50,000 or more but does not exceed the WTO GPA threshold for supplies (see 25.402(b)). \* \* \*

■ 20. Amend section 25.408 by revising paragraph (a) introductory text and (a)(5) to read as follows:

**25.408 Procedures.**

(a) If the WTO GPA or an FTA applies (see 25.401), the contracting officer must—

\* \* \* \* \*

(5) Provide unsuccessful offerors from WTO GPA or FTA countries notice in accordance with 14.409–1 or 15.503.

\* \* \* \* \*

■ 21. Amend section 25.502 by revising the introductory text of paragraph (b), paragraphs (b)(1) and (b)(3), and the introductory text of paragraph (c) to read as follows:

**25.502 Application.**

\* \* \* \* \*

(b) For acquisitions covered by the WTO GPA (see Subpart 25.4)—

(1) Consider only offers of U.S.-made or designated country end products,

unless no offers of such end products were received;

\* \* \* \* \*

(3) If there were no offers of U.S.-made or designated country end products, make a nonavailability determination (see 25.103(b)(2)) and award on the low offer (see 25.403(c)).

(c) For acquisitions not covered by the WTO GPA, but subject to the Buy American Act (an FTA or the Israeli Trade Act also may apply), the following applies:

\* \* \* \* \*

■ 22. Amend section 25.503 by revising paragraph (a)(2) to read as follows:

**25.503 Group offers.**

(a) \* \* \*

(2) If the acquisition is covered by the WTO GPA and any part of the offer consists of items restricted in accordance with 25.403(c).

**25.504–2 WTO GPA/Caribbean Basin Trade Initiative/FTAs.**

\* \* \* \* \*

■ 23. Revise 25.504–2 section heading to read as set forth above; and remove “Trade Agreement Act applies” from the first sentence of the undesignated paragraph following the table in Example 1 and adding “acquisition is covered by the WTO GPA” in its place.

**25.504–3 [Amended]**

■ 24. Amend section 25.504–3 in paragraphs (b) and (c) by removing from the first sentence of the undesignated paragraph following the tables in Examples 2 and 3 “subject to the Trade Agreements Act” and adding “covered by the WTO GPA” in their place.

**25.504–4 [Amended]**

■ 25. Amend section 25.504–4 in paragraph (a) by removing from the paragraph entitled “Problem”, following the table, “Trade Agreements Act does not apply” and adding “acquisition is not covered by the WTO GPA” in its place; and removing “subject to the Trade Agreements Act” from the last

paragraph of "STEP 2", and adding "covered by the WTO GPA" in its place.

**25.1002 [Amended]**

■ 26. Amend section 25.1002 in the first sentence of paragraph (a) by removing "Trade Agreements Act" and adding "WTO GPA" in its place.

**25.1101 [Amended]**

■ 27. Amend section 25.1101 by removing from the first sentence of paragraph (c)(1) "Trade Agreements Act applies" and adding "acquisition is covered by the WTO GPA" in its place.

■ 28. Amend section 25.1102 by revising paragraph (c)(1) and the last sentence of paragraph (c)(3) to read as follows:

**25.1102 Acquisition of construction.**

\* \* \* \* \*

(c) \* \* \*

(1) List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, other than WTO GPA country, least developed country, or FTA country construction material.

\* \* \* \* \*

(3) \* \* \* List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, other than designated country, or Australian, Chilean, or Moroccan construction material.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 29. Amend section 52.212-3 by revising paragraphs (g)(1)(ii), (g)(4)(i), the first sentence of (g)(4)(ii), and (g)(4)(iii) of the provision to read as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

**Offeror Representations and Certifications—Commercial Items (Jan 2005)**

\* \* \* \* \*

(g)(1) \* \* \*

(ii) The offeror certifies that the following supplies are end products of Australia, Canada, Chile, Mexico, or Singapore, or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

**END PRODUCTS OF AUSTRALIA, CANADA, CHILE, MEXICO, OR SINGAPORE OR ISRAELI END PRODUCTS:**

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

\* \* \* \* \*

(4) \* \* \* (i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products. \* \* \*

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

\* \* \* \* \*

■ 30. Amend section 52.212-5 by—  
 ■ a. Removing from the clause heading "(Dec 2004)" and adding "(Jan 2005)" in its place;  
 ■ b. Revising paragraph (b)(24)(i) and (b)(25) to read as follows:

**52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

**CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JAN 2005)**

(b) \* \* \*

(24)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (Jan 2005) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78, 108-286).

\* \* \* \* \*

(25) 52.225-5, Trade Agreements (Jan 2005) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

\* \* \* \* \*

■ 31. Amend section 52.225-3—  
 ■ a. By revising the date of the clause to read "(JAN 2005)";  
 ■ b. In paragraph (a) of the clause by adding, in alphabetical order, the

definition "End product of Australia, Canada, Chile, Mexico, or Singapore"; and removing the definitions "Free Trade Agreement country" and "Free Trade Agreement country end product"; and

■ c. By revising the first and last sentences of paragraph (c) of the clause to read as follows:

**52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.**

\* \* \* \* \*

**Buy American Act—Free Trade Agreements—Israeli Trade Act (Jan 2005)**

(a) \* \* \*

*End product of Australia, Canada, Chile, Mexico, or Singapore* means an article that—  
 (1) Is wholly the growth, product, or manufacture of Australia, Canada, Chile, Mexico, or Singapore; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Australia, Canada, Chile, Mexico, or Singapore into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

\* \* \* \* \*

(c) *Delivery of end products.* The Contracting Officer has determined that FTAs (except the Morocco FTA) and the Israeli Trade Act apply to this acquisition. \* \* \* If the Contractor specified in its offer that the Contractor would supply an end product of Australia, Canada, Chile, Mexico, or Singapore or an Israeli end product, then the Contractor shall supply an end product of Australia, Canada, Chile, Mexico, or Singapore, an Israeli end product or, at the Contractor's option, a domestic end product.

\* \* \* \* \*

■ 32. Amend section 52.225-4 by—  
 ■ a. Revising the date of the provision to read "(Jan 2005)";  
 ■ b. Revising the last sentence of paragraph (a) of the provision; and  
 ■ c. Revising paragraph (b) of the provision to read as follows:

**52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.**

\* \* \* \* \*

**Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate (Jan 2005)**

(a) \* \* \* The terms "component," "domestic end product," "end product," "end product of Australia, Canada, Chile, Mexico, or Singapore," "foreign end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act."

(b) The offeror certifies that the following supplies are end products of Australia, Canada, Chile, Mexico, or Singapore or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

**END PRODUCTS OF AUSTRALIA, CANADA, CHILE, MEXICO, OR SINGAPORE OR ISRAELI END PRODUCTS:**

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____
[List as necessary]	
* * * * *	

- 33. Amend section 52.225-5 by—
- a. Revising the date of the clause to read "(Jan 2005)";
- b. Removing from paragraph (a) of the clause the definition "Caribbean Basin country"; revising the definitions "Designated country" and "Designated country end product"; removing the definition "Free Trade Agreement country"; adding, in alphabetical order, the definitions "Least developed country end product" and "WTO GPA country end product"; and
- c. Revising paragraph (b) of the clause to read as follows:

**52.225-5 Trade Agreements.**  
\* \* \* \* \*

**Trade Agreements (Jan 2005)**

(a) \* \* \*

*Designated country* means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

*Designated country end product* means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

\* \* \* \* \*

*Least developed country end product* means an article that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

\* \* \* \* \*

*WTO GPA country end product* means an article that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) *Delivery of end products.* The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

(End of clause)

- 34. Amend section 52.225-6 by—
- a. Removing from the provision heading "(Jan 2004)" and adding "(Jan 2005)" in its place; and
- b. Revising paragraph (a), the first sentence of paragraph (b), and paragraph (c) of the provision to read as follows:

**52.225-6 Trade Agreements Certificate.**

\* \* \* \* \*

**Trade Agreements Certificate (Jan 2005)**

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(b) The offeror shall list as other end products those supplies that are not U.S.-made or designated country end products.

\* \* \*

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

(End of provision)

**52.225-9 [Amended]**

- 35. Amend section 52.225-9 in the clause heading by removing "(June 2003)" and adding "(Jan 2005)" in its place; and in paragraph (a) in the definition "Cost of components" by removing from the end of paragraph (2) the words "end product" and adding "construction material" in its place.
- 36. Amend section 52.225-11—
- a. By removing from the clause heading "(Oct 2004)" and adding "(Jan 2005)" in its place;
- b. In paragraph (a) by adding, in alphabetical order, the definition "Caribbean Basin country construction material"; by removing from the end of paragraph (2) in the definition "Cost of components" the words "end product" and adding "construction material" in its place; by revising the definitions "Designated country" and "Designated country construction material"; by removing the definition "Free Trade Agreement country"; and by adding the definitions "Least developed country construction material" and "WTO GPA country construction material";
- c. By revising paragraphs (b)(1) and (b)(2) of the clause; and
- d. By revising Alternate I. The added and revised text reads as follows:

**52.225-11 Buy American Act—Construction Materials under Trade Agreements.**

\* \* \* \* \*

**Buy American Act—Construction Materials Under Trade Agreements (Jan 2005)**

(a) *Definitions.* \* \* \*



Caribbean Basin country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

\* \* \* \* \*

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

\* \* \* \* \*

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

\* \* \* \* \*

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials

from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

\* \* \* \* \*

(b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic, designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

\* \* \* \* \*

Alternate I (Jan 2005). As prescribed in 25.1102(c)(3), delete the definition of “designated country construction material” from the definitions in paragraph (a) of the basic clause, add the following definition of “Australian, Chilean, or Moroccan construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Australian, Chilean, or Moroccan construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Australia, Chile, or Morocco; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Australia, Chile, or Morocco into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for WTO GPA country and Australian, Chilean, and Moroccan, least developed country, and Caribbean Basin country construction materials.

(2) The Contractor shall use only domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

- 37. Amend section 52.225–12 by—
■ a. Removing from the provision heading “(JAN 2004)” and adding “(JAN 2005)” in its place;
■ b. Revising paragraphs (a), (d)(1), and the introductory text of (d)(3) of the provision; and
■ c. Removing from Alternate II “(Jan 2004)” and adding “(Jan 2005)” in its place; and revising paragraphs (a), (d)(1),

and the introductory text of (d)(3) to read as follows:

52.225–12 Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements.

\* \* \* \* \*

Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements (Jan 2005)

(a) Definitions. “Construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225–11).

\* \* \* \* \*

(d) Alternate offers. (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

\* \* \* \* \*

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

\* \* \* \* \*

(End of provision)

\* \* \* \* \*

Alternate II (Jan 2005). \* \* \*

(a) Definitions. “Australian, Chilean, or Moroccan construction material,” “Caribbean Basin country construction material,” “construction material,” “domestic construction material,” “foreign construction material,” “least developed country construction material,” and “WTO GPA country construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225–11).

(d)(1) When an offer includes foreign construction material, other than WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on use of equivalent domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material.

\* \* \* \* \*

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, and the offeror shall be required to furnish such domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material. An offer based on use of the foreign construction material for which an exception was requested—

\* \* \* \* \*

[FR Doc. 04-28400 Filed 12-27-04; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Chapter 1

#### Federal Acquisition Regulation; Small Entity Compliance Guide

**AGENCIES:** Department of Defense (DoD),  
General Services Administration (GSA),

and National Aeronautics and Space  
Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2001-27 which amends the FAR. An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2001-27, which precedes this document. These documents are also available via the Internet at <http://www.acqnet.gov/far>.

**FOR FURTHER INFORMATION CONTACT:**  
Laurieann Duarte, FAR Secretariat, (202)  
501-4225. For clarification of content,  
contact Cecelia Davis at (202) 219-0202.

#### Free Trade Agreements—Australia and Morocco

This interim rule allows contracting  
officers to purchase the products of

Australia and Morocco without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated Free Trade Agreements with Australia and Morocco, which go into effect January 1, 2005, according to Public Laws 108-286 and 108-302. These Agreements join the North American Free Trade Agreement (NAFTA) and the Chile and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Australian Free Trade Agreement is \$58,550 (the same as other Free Trade Agreements to date), but the threshold for applicability of the Morocco Free Trade Agreement is \$175,000. Because of the short statutory time frame, this is an interim rule. Also in this rule are changes requested by the U.S. Trade Representative, in the list of Least Developed Countries, and changes in terminology on how the FAR uses the terms “designated country” and “Trade Agreements Act.” Some technical changes are also included.

Dated: December 22, 2004.

**Laura Auletta,**

*Director, Contract Policy Division.*

[FR Doc. 04-28401 Filed 12-27-04; 8:45 am]

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