

PART 25—FOREIGN ACQUISITION**25.003 [Amended]**

■ 2. Amend section 25.003 in the definition “Caribbean Basin country” by adding “Dominican Republic,” after “Dominica.”

25.400 [Amended]

■ 3. Amend section 25.400 in paragraph (a)(2) by removing “the Dominican Republic and”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.212–5 [Amended]**

■ 4. Amend section 52.212–5 by removing “(June 2003)” from the clause heading and in paragraph (b)(23) and adding “(Oct 2003)” in its place.

52.225–5 [Amended]

■ 5. Amend section 52.225–5 by revising the date of the clause to read “(Oct 2003)” and in paragraph (a) of the clause, in the definition “Caribbean Basin country,” by adding “Dominican Republic,” after “Dominica.”

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 25 and 52**

[FAC 2001–16; FAR Case 2001–015; Item VII]

RIN 9000–AJ35

Federal Acquisition Regulation; Prohibited Sources

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement recent Executive orders and to reflect the regulations of the Department of the Treasury’s Office of Foreign Assets Control (OFAC).

DATES: *Effective Date:* October 31, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS

Building, Washington, DC 20405, (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 2001–16, FAR case 2001–015.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 13080, March 20, 2002. The proposed rule implemented Executive Order 13192, Lifting and Modifying Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), and reflected the regulations of OFAC in the Department of the Treasury.

One respondent submitted public comments. The Councils considered the public comments before agreeing to convert the proposed rule to a final rule with minor changes.

The respondent recommended that we restore the statement at FAR 25.701(a) that the restrictions apply to acquisitions of supplies and services, even for overseas use. The Councils do not concur. This statement regarding overseas use was included at FAR 25.701(a) because we were trying to make a distinction between prohibitions on import of some supplies and services into the United States and the voluntary policy of the Government not to acquire such supplies for overseas use. However, the Department of the Treasury brought to the attention of the Councils that most of the prohibitions already applied to overseas acquisition and use as well as to importation. The regulations at 31 CFR chapter V provide details as to whether the prohibitions apply to acquisition for overseas use as well as importation.

The respondent also was concerned that we should retain paragraph (c) of FAR 52.225–13, Restrictions on Certain Foreign Purchases. Paragraph (c) provides for flowdown of the restrictions to subcontractors. The proposed rule did not delete paragraph (c) from the clause. It was not reprinted in the **Federal Register** notice because no changes were proposed to that paragraph.

There are other recent directives which are relevant to subpart 25.7, which are not yet implemented in the OFAC regulations:

- Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism;
- Executive Order 13288, Blocking Property of Persons Undermining

Democratic Processes or Institutions in Zimbabwe;

- Executive Order 13268, Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001; and

- The general license issued on May 23, 2003, by the Department of the Treasury entitled “Iraqi Sanctions Regulations.”

Contracting officers are to refer to the above directives and the most recent version of the regulations of OFAC at 31 CFR chapter V.

Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea. This rule removes Serbia, the Taliban-controlled regions of Afghanistan, and Iraq from the list of prohibited sources and points the contracting officer to lists of entities and individuals subject to economic sanctions that are available at <http://www.epls.gov/TerList1.html>.

The contracting officer is no longer authorized in unusual circumstances to acquire for use outside the United States supplies or services restricted by this section, unless specifically authorized by OFAC. However, OFAC has granted authority to Department of Defense personnel to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by OFAC.

This rule also amends the legal basis for use of the clause 52.225–13, Restrictions on Certain Foreign Purchases, that is provided in the clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). The rule replaces the list of specific Executive orders, which is incomplete and outdated, with a general reference to all proclamations, Executive orders, and statutes administered by OFAC.

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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final

rule will not 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.*, because the rule only affects acquisitions from prohibited sources.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,
Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 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 25—FOREIGN ACQUISITION

■ 2. Revise section 25.701 to read as follows:

25.701 Restrictions.

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, agencies and their contractors and subcontractors must not acquire any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea into the United States or its outlying areas. In addition, lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.epls.gov/Terlist1.html>. More information about these restrictions, as well as updates, is available in OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <http://www.treas.gov/ofac>.

25.702 [Amended]

■ 3. Amend section 25.702 by removing "622-2520" and adding "622-2490" in its place.

25.1103 [Amended]

■ 4. Amend section 25.1103 in paragraph (a) by removing "(see 25.701(a)(2))".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212-5 by revising the date of the clause and paragraph (b)(24) to read as follows:

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

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Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Oct. 2003)

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(b) * * *

(24) 52.225-13, Restrictions on Certain Foreign Purchases (Oct. 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

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■ 6. Amend section 52.213-4 by revising paragraph (a)(1)(iv) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

(a) * * *

(1) * * *

(iv) 52.225-13, Restrictions on Certain Foreign Purchases (Oct. 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

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■ 7. Amend section 52.225-13 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

52.225-13 Restrictions on Certain Foreign Purchases.

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Restrictions on Certain Foreign Purchases (Oct. 2003)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at

<http://www.epls.gov/Terlist1.html>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <http://www.treas.gov/ofac>.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2001-16; FAR Case 2002-001; Item VIII]

RIN 9000-AJ46

Federal Acquisition Regulation; Economic Planning, Employee Morale, and Travel Cost Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising three cost principles regarding economic planning costs; employee morale, health, welfare, food service, and dormitory costs and credits; and travel costs. The changes restructure the paragraphs and remove unnecessary and duplicative language to increase clarity and readability.

DATES: *Effective Date:* October 31, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501-0650. Please cite FAC 2001-16, FAR case 2002-001.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55686, August 29, 2002, with request for comments. One respondent submitted comments; a discussion of the comments is provided below. Differences between the proposed rule and final rule are discussed in Section B, Comments 1 and 2, below.