

required to implement the recently enacted Public Law 108-375, Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (October 28, 2004), Section 821, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). 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 19 and 52

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 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 19—SMALL BUSINESS PROGRAMS

19.502-2 [Amended]

■ 2. Amend section 19.502-2 in paragraph (d) by removing the word “four”.

■ 3. In section 19.1002 revise paragraph (1) of the definition “Emerging small business reserve amount” to read as follows:

19.1002 Definitions.

* * * * *

Emerging small business reserve amount * * *

(1) \$25,000 for construction, refuse systems and related services, non-nuclear ship repair, landscaping and pest control services; and

* * * * *

■ 4. Amend section 19.1005 in paragraph (a) by adding an Item 5 to the “NAICS Description” to read as follows:

19.1005 Applicability.

(a) * * *

NAICS CODE	NAICS DESCRIPTION
5. Landscaping and Pest Control Services	
561710	Exterminating and Pest Control Services
561730	Landscaping Services
* * *	* * *

19.1001, 19.1003, 19.1007, and 19.1008 [Amended]

■ 5. In addition to the amendments set forth above, remove the word “four” in

the following places:(a) Section 19.1001(a);(b) Section 19.1003(a) and (c);(c) Section 19.1007(b) and (c); and(d) Section 19.1008(a).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.212-3 by revising the date of the clause to read “(MAR 2005)” and by removing from paragraphs (c)(8)(i) and (c)(8)(ii) the word “four” wherever it appears.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 2005-01; FAR Case 2003-021; Item V]

RIN 9000-AJ95

Federal Acquisition Regulation; Nonavailable Articles-Policy

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 clarify the intent of the list of items determined to be nonavailable for purposes of the Buy American Act, and to emphasize the need to conduct market research, appropriate to the circumstances, for potential domestic sources.

DATES: *Effective Date:* April 8, 2005.

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 2005-01, FAR case 2003-021.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 29632, May 24, 2004. The rule proposed to amend FAR Subpart 25.1 in order to clarify that being on the list does not mean that an item is

completely nonavailable from U.S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the proposed rule also emphasized the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list. The Councils received no comments on the proposed rule and have agreed to convert the proposed rule to a final rule without change.

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 it is a clarification of existing policies, except for requiring a more proactive approach to market research by the Government.

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 Part 25

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

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

PART 25—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 25 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).

■ 2. Amend section 25.103 by revising paragraph (b) to read as follows:

25.103 Exceptions.

* * * * *

(b) *Nonavailability.* The Buy American Act does not apply with respect to articles, materials, or supplies

if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(1) *Class determinations.* (i) A nonavailability determination has been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

(ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

(iii) The determination in paragraph (b)(1)(i) of this section does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation. The contracting officer must—

(A) Ensure that the appropriate Buy American Act provision and clause are included in the solicitation (see 25.1101(a), 25.1101(b), or 25.1102);

(B) Specify in the solicitation that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components; and

(C) Submit a copy of supporting documentation to the appropriate council identified in 1.201-1, in accordance with agency procedures, for possible removal of the article from the list.

(2) *Individual determinations.* (i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in 1.201-1, in

accordance with agency procedures, for possible addition to the list in 25.104.

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsized in accordance with 5.201.

(iii) No offer for a domestic end product was received.

* * * * *

■ 3. Amend section 25.104 in paragraph (a) by removing “25.103(b)” and adding “25.103(b)(1)(i)” in its place; and revising paragraph (b) to read as follows:

25.104 Nonavailable articles.

* * * * *

(b) This list will be published in the **Federal Register** for public comment no less frequently than once every five years. Unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation (see 1.502).

25.202 [Amended]

■ 4. Amend section 25.202 in the last sentence of paragraph (a)(2) by removing “25.104(b)” and adding “25.103(b)(1)” in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 2005-01; FAR Case 1999-025; Item VI]

RIN 9000-AI70

Federal Acquisition Regulation; Cost Accounting Standards Administration

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 language pertaining to the Cost Accounting Standards Administration, and the related FAR contract clause,

Administration of Cost Accounting Standards. In addition, a new contract clause is added, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost-impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. To assist in understanding the changes between the current FAR rule and this final FAR rule, a matrix that summarizes the major changes is provided in Section C, Supplementary Information, below.

DATES: *Effective Date:* April 8, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Richard C. Loeb, Acting Director, Office of Acquisition Policy, at (202) 208-3810. Please cite FAC 2005-01, FAR case 1999-025.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 20854, April 18, 2000, with a request for comments by June 19, 2000. Nine respondents submitted public comments. Additional comments were also provided by the public at a series of public meetings held on August 2, September 26, and October 17, 2000. As a result of the comments received, the Councils made significant changes to the proposed FAR rule and published a second proposed FAR rule in the **Federal Register** at 68 FR 40104, July 3, 2003, with a request for comments by September 2, 2003. An additional public meeting was held on August 5, 2003.

Nine respondents submitted comments in response to the second proposed FAR rule. A discussion of these public comments are provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the second proposed rule and final rule are discussed in Section B, Comments 8, 9, 12, 21, 26, 27, 28, 29, 35 and Other Changes, below.

B. Public Comments

Public Meeting

1. *Comment:* Four respondents recommended holding a public working group session to address the concerns and recommendations contained in the public comments submitted in response to the proposed rule.