

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: November 15, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published at 71 FR 20305, April 19, 2006, is adopted as a final rule without change.

[FR Doc. 06-9307 Filed 11-21-06; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-14; FAR Case 2006-017; Item III; Docket 2006-0020, Sequence 11]

RIN 9000-AK61

Federal Acquisition Regulation; FAR Case 2006-017, Free Trade Agreements—Bahrain and Guatemala

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 the Dominican Republic—Central America—United States Free Trade Agreement with respect to Guatemala and the United States—Bahrain Free Trade Agreement.

DATES: *Effective Date:* November 22, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before January 22, 2007.

ADDRESSES: Submit comments identified by FAC 2005-14, FAR case

2006-017, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting “Federal Acquisition Regulation” as the agency of choice. At the “Keyword” prompt, type in the FAR case number (for example, FAR Case 2006-001) and click on the “Submit” button. You may also search for any document by clicking on the “Advanced search/document search” tab at the top of the screen, selecting from the agency field “Federal Acquisition Regulation”, and typing the FAR case number in the keyword field. Select the “Submit” button.

- 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 2005-14, FAR case 2006-017, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501-4082. Please cite FAC 2005-14, FAR case 2006-017. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Part 25 and the corresponding clauses in Part 52 to implement the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR) with respect to Guatemala and the United States—Bahrain Free Trade Agreement (FTA). Congress approved these trade agreements in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Public Law 109-53) and the United States—Bahrain Free Trade Agreement Implementation Act (Pub. L. 109-169), respectively. These trade agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials from Guatemala and Bahrain and specify procurement procedures designed to ensure fairness in the acquisition of supplies and services.

This interim rule adds Bahrain and Guatemala to the definition of “Free Trade Agreement country.” The rule

also deletes Guatemala from the definition of “Caribbean Basin country” because, in accordance with Section 201(a)(3) of Pub. L. 109-53, when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act.

The excluded services for the Bahrain FTA are the same as for the CAFTA-DR, Chile FTA, and NAFTA. Guatemala has the same thresholds as the other CAFTA-DR countries. The Bahrain FTA threshold for supply and service contracts is \$193,000. For construction contracts, the Bahrain FTA threshold is \$8,422,165.

Like the Morocco FTA, the Bahrain FTA threshold for supplies and services is higher than the thresholds for the other FTAs. Therefore, Bahrainian end products are not covered by the Buy American Act—Free Trade Agreements—Israeli Trade Act provision and clause (FAR 52.225-3 and 52.225-4). Similarly, like NAFTA, the Bahrain FTA threshold for construction is higher than the thresholds of the other FTAs. Therefore Bahrainian construction material is excluded from coverage under the Buy American Act—Construction Materials under Trade Agreements provision and clause (52.225-11 and 52.225-12) for acquisitions less than \$8,422,165 (Alternate I).

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 goods and services of Guatemala and Bahrain, 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 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 2005–14, FAR case 2006–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply, because the interim rule affects the certification and information collection requirements in the provisions at FAR 52.212–3, 52.225–4, 52.225–6, and 52.225–11 currently approved under OMB clearances 9000–0136, 9000–0130, 9000–0025, and 9000–0141 respectively. The impact, however, 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 CAFTA-DR took effect with respect to Guatemala on July 1, 2006, and the Bahrain FTA took effect on August 1, 2006. 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 25 and 52

Government procurement.

Dated: November 15, 2006.

Ralph De Stefano,
Director, Contract 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 continues 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

25.003 [Amended]

- 2. Amend section 25.003 by—
- a. Removing from the definition “Caribbean Basin country”, “Guatemala,”;
- b. Adding to the definition in paragraph (2) of “Designated country”, “Bahrain,” after “Australia,” and “Guatemala,” after “El Salvador,” and removing from paragraph (4), “Guatemala,”; and
- c. Adding to the definition “Free Trade Agreement country”, “Bahrain,” after “Australia,” and “Guatemala,” after “El Salvador,”.

- 3. Amend section 25.400 by removing from the end of paragraph (a)(2)(v) “and”; adding at the end of paragraph (a)(2)(vi) “and”; and adding a new paragraph (a)(2)(vii) to read as follows:

25.400 Scope of subpart.

- (a) * * *
- (2) * * *

(vii) United States-Bahrain Free Trade Agreement, as approved by Congress in the United States-Bahrain Free Trade Agreement Implementation Act (Pub. L. 109–169);

- * * * * *
- 4. Amend section 25.401(b) by revising the third column of the table heading to read as follows:

25.401 Exceptions.

*	*	*	*	*
(b)	* * *	* * *	Bahrain FTA, CAFTA-DR, Chile FTA, and NAFTA	* * *
*	*	*	*	*

25.402 [Amended]

- 5. Amend section 25.402(b), in the table, by adding after “Australia FTA” the entry “Bahrain FTA” and in its corresponding line items “\$193,000”, “\$193,000”, and “\$8,422,165”, respectively; and adding “Guatemala,” after “El Salvador,”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–3 [Amended]

- 6. Amend section 52.212–3 by—
- a. Revising the date of the clause to read “(NOV 2006)”;
- b. Adding in the second sentence of paragraph (g)(1)(i), “Bahrainian end product,” after “The terms”; and
- c. Removing from paragraph (g)(1)(ii), “(other than Moroccan end products)” and adding “(other than Bahrainian or Moroccan end products)” in its place, and removing from the table heading “(Other than Moroccan End Products)” and adding “(Other than Bahrainian or Moroccan End Products)” in its place.
- 7. Amend section 52.212–5 by—
- a. Revising the date of the clause;
- b. Revising paragraph (b)(24)(i); and
- c. Removing from paragraph (b)(25) “(JUN 2006)” and adding “(NOV 2006)” in its place.

The revised text reads 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 (NOV 2006)

* * * * *

(b) * * *

(24)(i) 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act (NOV 2006) (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, 109–53 and 109–169).

* * * * *

- 8. Amend section 52.225–3 by—
- a. Revising the date of the clause;
- b. Adding in paragraph (a), in alphabetical order, the definition “Bahrainian end product”;
- c. Adding in the definition “Free Trade Agreement country” “Bahrain,” after “Australia,” and “Guatemala,” after “El Salvador,”; and
- d. Removing from the first sentence of paragraph (c) “(except the Morocco FTA)” and adding “(except the Bahrain and Morocco FTA)” in its place; removing from the fourth sentence “(other than a Moroccan end product)” each time it appears (twice); and adding “(other than a Bahrainian or Moroccan end product)” in its place.

The revised text reads as follows:

52.225–3 Buy American Act—Free Trade Agreements—Israeli Trade Act.

* * * * *

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT (NOV 2006)

(a) *Definitions.* * * *

Bahrainian end product means an article that—

- (1) Is wholly the growth, product, or manufacture of Bahrain; 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 Bahrain 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.

* * * * *

52.225–4 [Amended]

- 9. Amend section 52.225–4 by—
- a. Revising the date of the clause to read “(NOV 2006)”;
- b. Adding to the second sentence in paragraph (a) “Bahrainian end product,” after “The terms”; and
- c. Removing from paragraph (b), “(other than Moroccan end products)”

and adding "(other than Bahrainian or Moroccan end products)" in its place, and removing from the table heading "(Other than Moroccan End Products)" and adding "(Other than Bahrainian or Moroccan End Products)" in its place.

- 10. Amend section 52.225-5 by—
a. Revising the date of the clause;
b. Revising paragraph (2) of the definition "Designated country"; and
c. Removing from paragraph (4) of the definition "Designated country", "Guatemala,".

The revised text reads as follows:

52.225-5 Trade Agreements.

TRADE AGREEMENTS (NOV 2006)

- (a) Designated country

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

- 11. Amend section 52.225-11 by—
a. Revising the date of the clause;
b. Revising paragraph (2) of the definition "Designated country";
c. Removing "Guatemala" from paragraph (4) of the definition "Designated country"; and
d. Revising Alternate I.

The revised text reads as follows:

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

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (NOV 2006)

- (a) Designated country

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

Alternate I (NOV 2006). As prescribed in 25.1102(c)(3), add the following definitions of "Bahrainian construction material" and "Mexican 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:

Bahrainian construction material means a construction material that—

- (1) Is wholly the growth, product, or manufacture of Bahrain; 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 Bahrain into a new and different

construction material distinct from the materials from which it was transformed.

Mexican construction material means a construction material that—

- (1) Is wholly the growth, product, or manufacture of Mexico; 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 Mexico 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 designated country construction materials other than Bahrainian or Mexican construction materials.

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

- 12. Amend section 52.225-12 in Alternate II, by revising the date of the alternate, the introductory text, paragraph (d)(1), and the first sentence of the introductory text of paragraph (d)(3) to read as follows:

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

Alternate II (NOV 2006). As prescribed in 25.1102(d)(3), add the definitions of "Bahrainian construction material" and "Mexican construction material" to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Alternate offers. (1) When an offer includes foreign construction material, except foreign construction material from a designated country other than Bahrain or Mexico, 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 other than Bahrainian or Mexican 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 other than Bahrainian or Mexican construction material.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-14; FAR Case 2006-001; Item IV; Docket 2006-0020, Sequence 18]

RIN 9000-AK45

Federal Acquisition Regulation; FAR Case 2006-001, Free Trade Agreements—Morocco

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) agree to adopt as final, without change, an interim rule that amended the Federal Acquisition Regulation (FAR) to implement the new Free Trade Agreement with Morocco as approved by Congress (Public Law 108-302).

DATES: Effective Date: November 22, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501-4082. Please cite FAC 2005-14, FAR case 2006-001. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 71 FR 20306 on April 19, 2006, to implement the new Free Trade Agreement with Morocco as approved by Congress (Public Law 108-302). This Free Trade Agreement waives the