



# Federal Register

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**Tuesday,  
April 30, 2002**

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**Part VI**

**Department of Defense  
General Services  
Administration**

**National Aeronautics and  
Space Administration**

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**48 CFR Chapter 1  
Federal Acquisition Circular 2001-07;  
Final Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 2001-07; Introduction**

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

**ACTION:** Summary presentation of final rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001-07. 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.arnet.gov/far>.

**DATES:** For effective dates and comment dates, see separate documents which follow.

**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 the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001-07 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I .....	Preference for Performance-Based Contracting .....	2000-307	Wise
II .....	Revisions to Balance of Payments Program .....	1999-616	Davis
III .....	European Union Trade Sanctions .....	2001-002	Davis
IV .....	Technical Amendments.		

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001-07 amends the FAR as specified below:

**Item I—Preference for Performance-Based Contracting (FAR Case 2000-307)**

This final rule converts the interim rule published as Item I of FAC 97-25 at 66 FR 22082, May 2, 2001, to a final rule with an amendment at FAR 7.105. The rule implements Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398). The rule affects contracting officers that buy services by explicitly establishing a preference for performance-based contracts or task orders. Guidance for performance-based contracting is available at the following websites: <http://www.arnet.gov/Library/OFP/BestPractices/>, <http://oamweb.osec.doc.gov/pbsc/index.html>, or <http://www.gsa.gov/Portal/content/pubs-content.jsp?contentOID=119969&contentType=1008&PMVP=1>.

**Item II—Revisions to Balance of Payments Program (FAR Case 1999-616)**

This final rule amends the FAR by removing Subpart 25.3, Balance of Payments Program, and making conforming changes to FAR Parts 13, 25, and 52. This revision will reduce administrative burdens on both the Government and the public. The FAR no longer requires contracting officers to

use balance of payments procedures to evaluate foreign offers when acquiring supplies for use outside the United States that are valued at more than \$100,000, but not more than \$186,000, or when awarding a construction contract to be performed outside the United States and valued at less than \$6,909,500. However, the Balance of Payments Program will be continued in the Department of Defense, and a Defense Federal Acquisition Regulation Supplement rule is being processed for this purpose.

**Item III—European Union Trade Sanctions (FAR Case 2001-002)**

This final rule revises FAR 25.1103(c)(2)(i) to specifically exclude solicitations issued and contracts awarded by DoD from the clause prescription for the use of FAR clauses 52.225-15, Sanctioned European Union Country End Products, and 52.225-16, Sanctioned European Union Country Services. This rule is a clarification of existing policy. DoD contracting officers must ensure that the clauses implementing European Union trade sanctions are not included in DoD solicitations and contracts.

**Item IV—Technical Amendments**

These amendments update sections and make editorial changes at FAR 12.301, 52.214-20, and 52.244-2.

Dated: April 23, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2001-07 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 2001-2007 are effective May 15, 2002.

Dated: April 19, 2002.

**Deidre A. Lee,**

*Director, Defense Procurement.*

Dated: April 18, 2002.

**Joseph A. Neurauter,**

*Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: April 17, 2002.

**Tom Luedtke,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 02-10368 Filed 4-29-02; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 2, 7, and 37**

[FAC 2001-07; FAR Case 2000-307; Item I]

RIN 9000-AJ12

**Federal Acquisition Regulation;  
Preference for Performance-Based  
Contracting**

**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 Section 821 of the Floyd D. Spence National Defense Authorization Act. The FAR rule explicitly states that performance-based contracting is the preferred method for acquiring services, enumerates an order of precedence, and further clarifies the documentation required in an acquisition plan when acquiring services.

**DATES:** Effective Date: May 15, 2002.

**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. Julia Wise, Procurement Analyst, at (202) 208-1168. Please cite FAC 2001-07, FAR case 2000-307.

**SUPPLEMENTARY INFORMATION:****A. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 66 FR 22082, May 2, 2001. The interim rule explicitly stated that performance-based contracting is the preferred method for acquiring services and enumerated the order of precedence established by Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398). The coverage contained in the final rule is the same as that in the interim rule except that the final rule amends paragraph (b)(4) of FAR 7.105 to clarify that contracting officers must provide rationale if a performance-based contract will not be

used or if a performance-based contract for services is contemplated on other than a firm-fixed price basis (see 37.102(a) and 16.505(a)(3)).

Two respondents submitted comments on the interim rule. The first comment suggested that the language changes in FAR Parts 2 and 37 in this rule should be incorporated into FAR Part 8. While the Councils do not believe added references in Part 8 are needed as a general matter with respect to this rulemaking, revisions to Subpart 8.4 regarding use of the Federal Supply Schedules for the acquisition of services are under development and references to Part 37 policies on performance-based service contracting will be considered for incorporation as appropriate as part of that regulatory initiative.

The second comment stated that the FAR Part 2 definition for performance-based contracting is internally inconsistent because it calls for requirements to be set forth in clear, specific, and objective terms with measurable outcomes but also dictates the use of "broad and imprecise" statements of work. The Councils disagree. As revised, the definition of performance-based contracting, consistent with section 821(e) of the Defense Authorization Act for FY 01, explains what performance-based contracting should not include (e.g., broad and imprecise work statements, a structure centering on the manner that the work should be performed), and what it should contain (e.g., a work statement that has clear, specific, and objective terms with measurable outcomes).

This commenter further suggested that the regulations do not need to be changed, but acquisition personnel need to be trained in developing performance-based requirements. The regulatory changes in this rule are not meant as a substitute for training that will enhance the knowledge and skills of acquisition personnel in performance-based contracting. Guidance is available at the following websites:

<http://www.arnet.gov/Library/OFPP/BestPractices/>,  
<http://oamweb.osec.doc.gov/pbsc/index.html>, or  
<http://www.gsa.gov/Portal/content/pubs/content.jsp?contentOID=119969&contentType=1008&PMVP=1>.

Finally, the Office of Federal Procurement Policy has advised the FAR Council that it is establishing an inter-agency group to ensure a common understanding among the agencies regarding performance-based contracting requirements.

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 does not impose a new policy requirement on small entities. The FAR currently promotes the use of and documentation of performance-based service contracting and the use of firm-fixed-price type of contracts and task orders when it is appropriate to do so. Therefore, a Final Regulatory Flexibility Analysis (FRFA) was not performed. The Councils invite comments from small businesses and other interested parties. The Councils will also consider comments from small entities concerning the affected FAR subparts 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 2001-07, FAR Case 2000-307), in correspondence.

**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 2, 7, and 37**

Government procurement.

Dated: April 23, 2002

**Al Matera,**

*Director, Acquisition Policy Division.*

**Interim Rule Adopted as Final with One Change**

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2 and 37 that was published in the **Federal Register** at 66 FR 22082, May 2, 2001, as a final rule with the following change:

**PART 7—ACQUISITION PLANNING**

1. The authority citation for 48 CFR part 7 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 7.105 by adding a sentence to the end of paragraph (b)(4) to read as follows:

**7.105 Contents of written acquisition plans.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \* Provide rationale if a performance-based contract will not be used or if a performance-based contract for services is contemplated on other than a firm-fixed price basis (see 37.102(a) and 16.505(a)(3)).

\* \* \* \* \*

[FR Doc. 02-10369 Filed 4-29-02; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 13, 25, and 52**

[FAC 2001-07; FAR Case 1999-616; Item II]

RIN 9000-AI90

**Federal Acquisition Regulation;  
Revisions to Balance of Payments  
Program**

**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 remove the language pertaining to the Balance of Payments Program.

**DATES:** Effective Date: May 15, 2002.

**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 L. Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-07, FAR case 1999-616.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends FAR part 25, Foreign Acquisition, to remove subpart 25.3, Balance of Payments Program, and makes conforming changes to FAR parts 13 and 52. This revision will reduce the

administrative burdens on both the Government and the public, without significant impact on our international balance of payments.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 54936, September 11, 2000. One public comment was received. The commenter raised three specific issues: (1) This rule is a significant rule under E.O. 12866 and represents a major rule; (2) concern that no effort was made to coordinate the proposed changes and elimination of the Balance of Payments Program with the Department of Commerce; and (3) industry would be adversely impacted by the elimination of the Balance of Payments Program by the deletion of FAR 25.3. In response to these concerns, this rule is not deemed a significant rule nor a major rule and not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule applies primarily to civilian agency acquisitions of supplies valued at more than \$100,000, but not more than \$186,000, for use outside the United States. Few acquisitions meet all of these limitations. In reference to the coordination issue with the Department of Commerce, the Department of Commerce has a representative on the Civilian Agency Acquisition Council and raised no objection when the proposed rule was discussed and agreed upon. In addressing the commenter's economic concerns, it appears the commenter is unaware that the Balance of Payments Program will be continued within the Department of Defense, and is unaware of the DFARS case that has been opened to address this program.

Civilian agencies have limited overseas purchases and given the small range of products and services to which the Balance of Payments Program applies, the benefits derived from applying the Balance of Payments Program to Civilian agency procurements does not equal the time and effort expended. The Councils, with the recommendations of the International Acquisition Committee, thoroughly considered this comment before agreeing 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 the rule applies primarily to civilian agency acquisitions of supplies valued at more than \$100,000, but not more than \$186,000, for use outside the United States. Few acquisitions meet all of these limitations.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does apply; however, these changes to the FAR will reduce information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000-0023, 9000-0130, and 9000-0141 by approximately 1,121 hours.

**List of Subjects in 48 CFR Parts 13, 25, and 52**

Government procurement.

Dated: April 23, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 13, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 13, 25, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

2. Amend section 13.302-5 by revising paragraph (d)(3)(i) to read as follows:

**13.302-5 Clauses.**

\* \* \* \* \*

(d) \* \* \*

(3)(i) When an acquisition for supplies for use within the United States cannot be set aside for small business concerns and trade agreements apply (see Subpart 25.4), substitute the clause at FAR 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, used with Alternate I or Alternate II, if appropriate, instead of the clause at FAR 52.225-1, Buy American Act—Supplies.

\* \* \* \* \*

**PART 25—FOREIGN ACQUISITION**

**25.000 [Amended]**

3. Amend section 25.000 by removing "the Balance of Payments Program,".

**25.001 [Amended]**

4. Amend section 25.001 by removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively; and by removing “and the Balance of Payments Program” from the first sentence of newly redesignated paragraph (b).

**25.002 [Amended]**

5. Amend the table in section 25.002 as follows:

- a. In the first column by removing “25.3 Balance of Payments Program” and adding, in its place, “25.3 [Reserved]”; and
- b. In the third and fifth columns by removing “X” and adding, in their place, “—”.

6. Amend section 25.003 by revising the definition “Eligible product” to read as follows:

**25.003 Definitions.**

\* \* \* \* \*

*Eligible product* means a foreign end product that is not subject to discriminatory treatment under the Buy American Act due to applicability of a trade agreement to a particular acquisition.

\* \* \* \* \*

**Subpart 25.3—[Reserved]**

7. Remove and reserve subpart 25.3.

**25.402 [Amended]**

8. Amend section 25.402 in the first and fourth sentences by removing “or the Balance of Payments Program”; and in the fourth sentence by removing the word “such” and inserting “those” in its place.

**25.403 [Amended]**

9. Amend section 25.403 in paragraph (a)(1) by removing “and the Balance of Payments Program”.

**25.405 [Amended]**

10. Amend section 25.405 in the second sentence of paragraph (a) by removing “or the Balance of Payments Program”.

**25.406 [Amended]**

11. Amend section 25.406 by removing “or the Balance of Payments Program”.

**25.501 [Amended]**

12. Amend section 25.501 in paragraph (d) by removing “and Balance of Payments Program”.

**25.502 [Amended]**

13. Amend section 25.502—  
a. In the introductory text of paragraph (c) by removing “or the Balance of Payments Program”;

b. In paragraph (c)(3) by removing “and the Balance of Payments Program provide” and adding “provides” in its place;

c. In the introductory text of paragraph (c)(4) by removing “or 25.304”;

d. In paragraph (d)(2) by removing “or Balance of Payments Program”; and

e. In paragraph (d)(3) by removing “and Balance of Payments Program”.

14. Revise section 25.504 to read as follows:

**25.504 Evaluation Examples.**

The following examples illustrate the application of the evaluation procedures in 25.502 and 25.503. The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement (see 25.502(a)(1)). The evaluation factor may change as provided in agency regulations.

15. Amend section 25.504–1 by revising the section heading and paragraphs (b)(1) and (b)(2) to read as follows:

**25.504–1 Buy American Act.**

\* \* \* \* \*

(b)(1) *Example 2.*

Offer A .....	\$11,000	Domestic end product, small business
Offer B .....	\$10,700	Domestic end product, small business
Offer C .....	\$10,200	U.S.-made end product (not domestic), small business

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American Act applies. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business but is not a domestic end product (see 25.502(c)(4)). After applying the 12 percent factor, the evaluated price of Offer C is \$11,424. Award on Offer B at \$10,700 (see 25.502(c)(4)(ii)).

16. Amend section 25.1101 by revising paragraphs (a), (b), and (c)(1) to read as follows:

**25.1101 Acquisition of supplies.**

\* \* \* \* \*

(a)(1) Insert the clause at 52.225–1, Buy American Act—

Supplies, in solicitations and contracts with a value exceeding \$2,500 but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the

clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

- (i) The solicitation is restricted to domestic end products in accordance with Subpart 6.3;
- (ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (*e.g.*, nonavailability or public interest); or
- (iii) The acquisition is for supplies for use outside the United States.

(2) Insert the provision at 52.225–2, Buy American Act Certificate, in solicitations containing the clause at 52.225–1.

(b)(1)(i) Insert the clause at 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations and contracts if—

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the value of the acquisition is more than \$25,000, but is less than \$177,000; and

(B) No exception in 25.401 applies. For acquisitions of agencies not subject to the Israeli Trade Act (see 25.406), see agency regulations.

(ii) If the acquisition value exceeds \$25,000 but is less than \$50,000, use the clause with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$54,372, use the clause with its Alternate II.

(2)(i) Insert the provision at 52.225–4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate, in solicitations containing the clause at 52.225–3.

(ii) If the acquisition value exceeds \$25,000 but is less than \$50,000, use the provision with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$54,372, use the provision with its Alternate II.

(c)(1) Insert the clause at 52.225–5, Trade Agreements, in solicitations and contracts valued at \$177,000 or more, if the Trade Agreements Act applies (see 25.401 and 25.403) and the agency has determined that the restrictions of the

Buy American Act are not applicable to U.S.-made end products. If the agency has not made such a determination, the contracting officer must follow agency procedures.

\* \* \* \* \*

17. Amend section 25.1102 by revising the introductory text of paragraph (a), paragraph (b), the introductory text of paragraph (c), and paragraphs (d)(1) and (d)(2) to read as follows:

**25.1102 Acquisition of construction.**

(a) Insert the clause at 52.225-9, Buy American Act—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than \$6,806,000.

\* \* \* \* \*

(b)(1) Insert the provision at 52.225-10, Notice of Buy American Act Requirement—Construction Materials, in solicitations containing the clause at 52.225-9.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at 52.225-11, Buy American Act—Construction Materials under Trade Agreements, in solicitations and contracts for construction that is performed in the United States valued at \$6,806,000 or more.

\* \* \* \* \*

(d)(1) Insert the provision at 52.225-12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, in solicitations containing the clause at 52.225-11.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

\* \* \* \* \*

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

18. Amend section 52.212-3 by—  
a. Revising the date of the provision;

b. Removing “—Balance of Payments Program” from the introductory text of paragraph (f) (twice), and from paragraph (f)(1);

c. Removing “—Balance of Payments Program” from the introductory text of paragraph (g)(1) (twice), paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii);

d. Revising paragraphs (g)(2) and (g)(3); and

e. Removing “or the Balance of Payments Program” from the second

sentence of paragraph (g)(4)(iii). The revised text reads as follows:

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

\* \* \* \* \*

Offeror Representations and Certifications—Commercial Items (May 2002)

\* \* \* \* \*

(g) \* \* \*

(2) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act Certificate, Alternate I (May 2002)*. If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act”:

Canadian End Products:

Line Item No.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(List as necessary)*

(3) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act Certificate, Alternate II (May 2002)*. If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act”:

Canadian or Israeli End Products:

Line Item No.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Country of Origin

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(List as necessary)*

\* \* \* \* \*

19. Amend section 52.212-5 by revising the date of the clause and paragraphs (b)(18) and (b)(19)(i) 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 (May 2002)

(b) \* \* \*

(18) 52.225-1, Buy American Act—Supplies (41 U.S.C. 10a-10d).

(19)(i) 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

\* \* \* \* \*

**52.213-4 [Amended]**

20. Amend section 52.213-4 in the clause heading by removing “(APR 2002)” and adding “(May 2002)” in its place; and in paragraph (b)(1)(viii) by removing “—Balance of Payments Program”, and by removing “(Feb 2000)” and adding “(May 2002)” in its place.

21. Amend section 52.225-1 by revising the section and clause headings; by revising paragraph (b); and by removing “—Balance of Payments Program” from paragraph (d). The revised text reads as follows:

**52.225-1 Buy American Act—Supplies.**

Buy American Act—Supplies (May 2002)

\* \* \* \* \*

(b) The Buy American Act (41 U.S.C. 10a-10d) provides a preference for domestic end products for supplies acquired for use in the United States.

\* \* \* \* \*

22. Amend section 52.225-2 by revising the section and provision headings; and in paragraph (a) by removing “—Balance of Payments Program”. The revised text reads as follows:

**52.225-2 Buy American Act Certificate.**

\* \* \* \* \*

Buy American Act Certificate (May 2002)

\* \* \* \* \*

23. Amend section 52.225-3 by—  
a. Revising the section and clause headings;

b. Revising paragraph (c);

c. Removing “—Balance of Payments Program” from the third sentence of paragraph (d); and

d. Removing from Alternates I and II “(Feb 2000)” and adding “(May 2002)” in their place; and removing “—Balance of Payment Program” from paragraph (d). The revised text reads as follows:

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

\* \* \* \* \*

Buy American Act—North American Free Trade Agreement—Israeli Trade Act (May 2002)

\* \* \* \* \*

(c) *Implementation.* This clause implements the Buy American Act (41 U.S.C. 10a–10d), the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note), and the Israeli Free Trade Area Implementation Act of 1985 (Israeli Trade Act) (19 U.S.C. 2112 note) by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products or Israeli end products.

\* \* \* \* \*

**52.225–4 [Amended]**

24. Amend section 52.225–4 by removing “—Balance of Payments Program” from the section and provision headings, paragraphs (a), (b), and (c), and Alternates I and II; and by revising the dates of the provision heading and Alternates I and II to read “(MAY 2002)”.

25. Amend section 52.225–6 by revising the date of the provision and paragraph (c) to read as follows:

**52.225–6 Trade Agreements Certificate.**

\* \* \* \* \*

Trade Agreements Certificate (May 2002)

\* \* \* \* \*

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA 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, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for those products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

(End of provision)

26. Amend section 52.225–9 by—

a. Revising the section and clause headings;

b. Removing “and the Balance of Payments Program” from paragraph (b)(1);

c. Revising paragraph (b)(3)(i); and

d. Removing the words “or Balance of Payments Program” from paragraph (b)(3)(ii), the introductory text of paragraph (c), the first sentence of paragraph (c)(2), and in paragraph (c)(3) (twice). The revised text reads as follows:

**52.225–9 Buy American Act—Construction Materials.**

\* \* \* \* \*

Buy American Act—Construction Materials (May 2002)

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

\* \* \* \* \*

(End of clause)

27. Amend section 52.225–10 by—

a. Revising the section and provision headings;

b. Removing “Balance of Payments Program—” from paragraph (a);

c. In the first and third sentences of paragraph (b) of the provision by removing “or Balance of Payments Program”;

d. In paragraph (c)(1) of the provision by removing “or Balance of Payments Program”; and

e. In Alternate I by removing “(Feb 2000)” and adding “(May 2002)” in its place; and by removing from paragraph (b) of the Alternate “or Balance of Payments Program”. The revised text reads as follows:

**52.225–10 Notice of Buy American Act Requirement— Construction Materials.**

\* \* \* \* \*

Notice of Buy American Act Requirement— Construction Materials (May 2002)

\* \* \* \* \*

(End of provision)

28. Amend section 52.225–11 by—

a. Revising the section and clause headings;

b. Removing the words “and the Balance of Payments Program” from paragraph (b)(1);

c. Revising paragraph (b)(4)(i) of the clause;

d. Removing the words “or Balance of Payments Program” from paragraph (b)(4)(ii), the introductory text of paragraph (c), the first sentence of paragraph (c)(2), and paragraph (c)(3) (twice); and

e. Revising the date and paragraph (b)(1) of 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 (May 2002)

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) The cost of domestic construction material would be unreasonable. The cost of

a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

\* \* \* \* \*

(End of clause)

*Alternate I (May 2002)*

(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 Trade Agreements Act applies to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

\* \* \* \* \*

29. Amend section 52.225–12 by—

a. Revising the section and provision headings;

b. Removing “Balance of Payments Program—” from paragraph (a) of the provision;

c. Removing “or Balance of Payments Program” from the first and third sentences of paragraph (b) of the provision;

d. Removing “or Balance of Payments Program” from paragraph (c)(1) of the provision;

e. Removing “(Feb 2000)” from Alternate I and adding “(May 2002)” in its place, and by removing “or Balance of Payments Program” from paragraph (b) of the Alternate; and

f. Removing “(June 2000)” from Alternate II and adding “(May 2002)” in its place, and by removing “Balance of Payments Program—” from paragraph (a) of the Alternate. The revised text reads 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 (May 2002)

\* \* \* \* \*

[FR Doc. 02–10370 Filed 4–29–02; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Part 25**

[FAC 2001-07; FAR Case 2001-002; Item III]

RIN 9000-AJ37

**Federal Acquisition Regulation;  
European Union Trade Sanctions**

**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 correct the clause prescription for the clauses that implement European Union trade sanctions by specifically exempting solicitations issued and contracts awarded by the Department of Defense.

**DATES:** Effective Date: May 15, 2002.

**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 L. Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-07, FAR case 2001-002.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule revises FAR 25.1103(c)(2)(i) to specifically exclude solicitations issued and contracts awarded by DoD from the clause prescription for the use of FAR clauses 52.225-15, Sanctioned European Union Country End Products, and 52.225-16, Sanctioned European Union Country Services. FAR 25.600 clearly states that European Union trade sanctions do not apply to the Department of Defense.

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 final rule does not constitute a significant FAR revision within the

meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR part 25 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 2001-07, FAR case 2001-002), in correspondence.

**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: April 23, 2002.

**Al Matera,**

*Director, Acquisition 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 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 25.1103 by revising paragraph (c)(2)(i) to read as follows:

**25.1103 Other provisions and clauses.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) Solicitations issued and contracts awarded by—

(A) A contracting activity located outside of the United States, provided the supplies will be used or the services will be performed outside of the United States; or

(B) The Department of Defense;

\* \* \* \* \*

[FR Doc. 02-10371 Filed 4-29-02; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 12 and 52**

[FAC 2001-07; Item IV]

**Federal Acquisition Regulation;  
Technical Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

**DATES:** *Effective Date:* May 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 2001-07, Technical Amendments.

**List of Subjects in 48 CFR Parts 12 and 52**

Government procurement.

Dated: April 23, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12 and 52 as set forth below:

1. The authority citation for 48 CFR parts 12 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 12—ACQUISITION OF  
COMMERCIAL ITEMS****12.301 [Amended]**

2. Amend section 12.301 at the end of paragraphs (b)(1) and (b)(2) by removing the semi-colons and adding a period in their places; and at the end of paragraph (b)(3) by removing “; and” and adding a period in its place.

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

3. Amend section 52.214-20 by revising the introductory text of Alternates I and II to read as follows:

**52.214-20 Bid Samples.**

\* \* \* \* \*

*Alternate I (May 2002).* As prescribed in 14.201-6(o)(2)(i), insert the following Alternate I:

\* \* \* \* \*



Alternate II (May 2002). As prescribed in 14.201-6(o)(2)(ii), insert the following Alternate II:

\* \* \* \* \*

**52.244-6 [Amended]**

4. Amend section 52.244-6 by revising the date of the clause to read "(May 2002)"; removing from paragraph (c)(1)(ii) "(Feb 1999)" and adding "(Apr 2002)" in its place; and removing from paragraph (c)(1)(v) "Flagged" and adding "Flag" in its place.

[FR Doc. 02-10372 Filed 4-29-02; 8:45 am]

**BILLING CODE 6820-EP-P**

**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 (Pub. L. 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-07 which amend the FAR. An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001-07 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

**FOR FURTHER INFORMATION CONTACT:** Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

**LIST OF RULES IN FAC 2001-07**

Item	Subject	FAR case	Analyst
I .....	Preference for Performance-Based Contracting .....	2000-307	Wise.
II .....	Revisions to Balance Of Payments Program .....	1999-616	Davis.
III .....	European Union Trade Sanctions .....	2001-002	Davis.
IV .....	Technical Amendments.		

**Item I—Preference for Performance-Based Contracting (FAR Case 2000-307)**

This final rule converts the interim rule published as Item I of FAC 97-25 at 66 FR 22082, May 2, 2001, to a final rule with an amendment at FAR 7.105. The rule implements Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398). The rule affects contracting officers that buy services by explicitly establishing a preference for performance-based contracts or task orders. Guidance for performance-based contracting is available at the following websites:

- <http://www.arnet.gov/Library/OFPP/BestPractices/>,
- <http://oamweb.osec.doc.gov/pbsc/index.html>, or
- [http://www.gsa.gov/Portal/content/pubs\\_content.jsp?contentOID=119969&contentType=1008&PMVP=1](http://www.gsa.gov/Portal/content/pubs_content.jsp?contentOID=119969&contentType=1008&PMVP=1).

**Item II—Revisions to Balance of Payments Program (FAR Case 1999-616)**

This final rule amends the FAR by removing Subpart 25.3, Balance of Payments Program, and making conforming changes to FAR Parts 13, 25, and 52. This revision will reduce administrative burdens on both the Government and the public. The FAR no longer requires contracting officers to use balance of payments procedures to evaluate foreign offers when acquiring supplies for use outside the United States that are valued at more than \$100,000, but not more than \$186,000, or when awarding a construction contract to be performed outside the United States and valued at less than \$6,909,500. However, the Balance of Payments Program will be continued in the Department of Defense, and a Defense Federal Acquisition Regulation Supplement rule is being processed for this purpose.

**Item III—European Union Trade Sanctions (FAR Case 2001-002)**

This final rule revises FAR 25.1103(c)(2)(i) to specifically exclude solicitations issued and contracts awarded by DoD from the clause prescription for the use of FAR clauses 52.225-15, Sanctioned European Union Country End Products, and 52.225-16, Sanctioned European Union Country Services. This rule is a clarification of existing policy. DoD contracting officers must ensure that the clauses implementing European Union trade sanctions are not included in DoD solicitations and contracts.

**Item IV—Technical Amendments**

These amendments update sections and make editorial changes at FAR 12.301, 52.214-20, and 52.244-2.

Dated: April 23, 2002.  
**Al Matera,**  
 Director, Acquisition Policy Division.  
 [FR Doc. 02-10373 Filed 4-29-02; 8:45 am]  
**BILLING CODE 6820-EP-P**