

48 CFR Chapter 1 et al.

Monday
December 27, 1999

Part IV

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Chapter 1 et al.
Civilian Agency Acquisition Council and
Defense Acquisition Regulations Council:
Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97-15; Introduction

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

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-15. 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 97-15 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	Pollution Control and Clean Air and Water	97-033	Linfield
I	Foreign Acquisition (Part 25 Rewrite)	97-024	Linfield
III	Contract Bundling (Interim)	1997-306 (97-306)	De Stefano
IV	Deobligation Authority	99-015	Klein
V	Transition of the Financial Management System Software Program	99-602	Nelson
VI	Document Availability	99-018	Moss
VII	SBA's 8(a) Business Development Program	98-011	Moss
VIII	Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold.	99-304	Moss
IX	Review of Award Fee Determinations (Burnside-Ott)	98-017	De Stefano
X	Nondisplacement of Qualified Workers—Commercial Items	99-600	O'Neill
XI	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.

Federal Acquisition Circular 97-15 amends the FAR as specified below:

Item I—Pollution Control and Clean Air and Water (FAR Case 97-033)

This final rule amends the FAR to remove Subpart 23.1, Pollution Control and Clear Air and Water; the provision at 52.223-1, Clean Air and Water Certification; and the clause at 52.223-2, Clean Air and Water. This amendment eliminates the burden on offerors to certify that they do not propose to use a facility for performance of the contract that is on the Environmental Protection Agency's (EPA) "List of Violating Facilities." Contracting officers will use the "GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs" (GSA List) to ensure that they do not award contracts to ineligible offerors. Excluded parties whose ineligibility is limited by reason of a Clean Air Act (CAA) or Clean Water Act (CWA) conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation, in

the GSA List. Internet access to the GSA List is available at <http://www.epls.arnet.gov>. These FAR changes do not change long-standing policy that a contracting officer cannot award a contract if performance of the contract would be at a facility convicted of a CAA or CWA violation unless the EPA has certified that the facility has corrected the cause giving rise to the conviction.

Item II—Foreign Acquisition (Part 25 Rewrite) (FAR Case 97-024)

This final rule amends FAR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 25, 36, and 52 to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language.

Item III—Contract Bundling (FAR Case 1997-306) (97-306)

This interim rule amends the FAR to implement Sections 411-417 of the Small Business Reauthorization Act of 1997. Sections 411-417 amend Title 15 of the U.S.C. to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

Item IV—Deobligation Authority (FAR Case 99-015)

This final rule revises FAR 4.804-5 and 42.302 to establish deobligation of

excess funds as one of the contract administration functions normally delegated to the contract administration office. In addition, the rule includes editorial revisions for plain language purposes.

Item V—Transition of the Financial Management System Software Program (FAR Case 99-602)

This final rule amends the FAR to delete Subpart 8.9, Financial Management Systems Software Mandatory Multiple Award Schedules Contracts Program.

Item VI—Document Availability (FAR Case 99-018)

This final rule amends the Federal Acquisition Regulation (FAR) at 11.201(d) and 52.211-2 to update how the public may obtain Department of Defense specifications and standards.

Item VII—SBA's 8(a) Business Development Program (FAR Case 98-011)

The interim rule published as Item III of FAC 97-12 is converted to a final rule without changes. The rule implements changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation, contained in 13 CFR Parts 121, 124, and 134, regarding the eligibility procedures for admission to

the 8(a)BD and contractual assistance programs.

VIII—Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 99-304)

This final rule amends FAR Subpart 13.5 to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 806 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2002, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

Item IX—Review of Award Fee Determinations (Burnside-Ott) (FAR Case 98-017)

This final rule amends the Federal Acquisition Regulation (FAR) to implement rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

Item X—Nondisplacement of Qualified Workers—Commercial Items (FAR Case 99-600)

This final rule amends FAR 52.212-5(c) to add the clause entitled 52.222-50, Nondisplacement of Qualified Workers, to the list of clauses that the contracting officer may incorporate by reference when applicable.

Item XI—Technical Amendments

Amendments are being made at sections 2.101, 5.205, 14.201-6, 15.208, 19.702, 32.503-6, 33.213, 36.104, 42.203, 52.215-1, 52.228-14, and 52.236-25 in order to update references and make editorial changes.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular (FAC) 97-15 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.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-15 are effective February 25, 2000, except for items III, VI, VIII, and XI, which are effective December 27, 1999, and Item VII which is effective December 27,

1999. Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: December 20, 1999.

R.D. Kerrins, Jr.,

COL, USA, Acting Director, Defense Procurement.

Dated: December 20, 1999.

J. Les Davison,

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

Dated: December 16, 1999.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 99-33429 Filed 12-23-99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 23, and 52

[FAC 97-15; FAR Case 97-033; Item I]

RIN 9000-A119

Federal Acquisition Regulation; Pollution Control and Clean Air and Water

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 that amends the Federal Acquisition Regulation (FAR) to eliminate the burden on offerors to certify that they do not propose to use a facility for the performance of the contract that is ineligible for award because it is on the Environmental Protection Agency's (EPA) "List of Violating Facilities." Contracting officers will use the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA List) to ensure that they do not award contracts to ineligible offerors. This change represents no change to the longstanding policy that a contracting officer must not award a contract if performance of the contract would be at a facility that has not corrected the cause that gave rise to a

criminal conviction under the Clean Air Act or Clean Water Act.

DATES: *Effective Date:* February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

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. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-15, FAR case 97-033.

SUPPLEMENTARY INFORMATION:

A. Background

Section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606) and Section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368) prohibit award of a Federal contract to any person who has been convicted of various violations under the Acts if the convicted person owns, leases, or supervises the facility at which the violations(s) occurred; and any part of the contract will be performed at the violating facility. This ineligibility begins the moment a judgment of conviction is entered. The statutes provide that the ineligibility for contract award remains in effect until the Administrator of the Environmental Protection Agency (EPA) certifies that the conditions giving rise to the conviction have been corrected. Excluded parties whose ineligibility is limited by reason of a CAA or CWA conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation, in the GSA List. Internet access to the GSA List is available at "http://epls.arnet.gov/".

The Councils published a proposed rule in the **Federal Register** at 64 FR 26264, May 13, 1999, that explained how the removal of FAR Subpart 23.1, FAR 52.223-1, and FAR 52.223-2 would not have a detrimental effect on the Government's environmental policy or its ability to enforce CAA and CWA requirements that apply to efforts performed under Federal contracts. Four respondents submitted comments concurring with the proposed rule. The Councils have agreed to convert the proposed rule to a final rule without change.

This rule was not subject to Office of Management and Budget 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 generally less than 50 facilities a year are ineligible for contract award as a result of convictions for violations of the CAA or CWA.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because these changes remove an information collection requirement approved under OMB Control Number 9000-0021. The paperwork to remove the collection from the FAR inventory will be submitted to OMB.

List of Subjects in 48 CFR Parts 1, 12, 23, and 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 12, 23, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 12, 23, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**1.106 [Amended]**

2. In section 1.106, amend the introductory text by removing the word "ten" and adding "10"; and in the table following the introductory paragraph remove FAR segment "52.223-1" and its corresponding OMB Control Number, "9000-0021".

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. In section 12.503, revise the introductory text of paragraph (b); remove paragraph (b)(1); redesignate paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2), respectively; remove paragraph (b)(4); and redesignate paragraph (b)(5) as (b)(3). The revised text reads as follows:

12.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.

* * * * *

(b) Certain requirements of the following laws are not applicable to

executive agency contracts for the acquisition of commercial items:

* * * * *

4. Revise paragraph (b) in section 12.504 to read as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

* * * * *

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327, *et seq.*, (see Subpart 22.3) are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components.

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**23.1 [Removed and Reserved]**

5. Subpart 23.1 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.223-1 and 52.223-2 [Reserved]**

6. Sections 52.223-1 and 52.223-2 are removed and reserved.

[FR Doc. 99-33430 Filed 12-23-99; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52**

[FAC 97-15; FAR Case 97-024; Item II]

RIN 9000-AH30

Federal Acquisition Regulation; Foreign Acquisition (Part 25 Rewrite)

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 policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language.

DATES: *Effective Date:* February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

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. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-15, FAR case 97-024.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52 to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language. DoD, GSA, and NASA published a proposed rule in the **Federal Register** on September 28, 1998 (63 FR 51642). Seven respondents submitted comments. The Councils considered all comments in formulation of the final rule. This final rule differs from the proposed rule as follows:

- Deletes the definitions "components" and "construction" (25.003), defines construction in 2.101, and substitutes the definition of "component" (2.101) in 52.225-1 and 52.225-3.
- Deletes the definition "end product" (25.003), defines "end product" (2.101), and substitutes the definition "end product" in 2.101 in the clauses at 52.225-1, 52.225-3, and 52.225-5.
- Revises the definition "U.S.-made end product" to include unmanufactured articles mined or produced in the United States (25.003).
- Deletes the requirement in some circumstances for a written determination of domestic nonavailability (25.103).
- Clarifies the procedures for preaward determinations of inapplicability of the Buy American Act for construction contracts (25.203).
- Clarifies the application of the Trade Agreements Act in acquisitions with limitations on the use of full and open competition in accordance with Part 6 or 13 (6.303-1, 25.401, and 25.408).
- Addresses excluded services under the Trade Agreements Act as well as NAFTA (25.401).
- Clarifies that the procedures at 25.502(c) apply only if the Buy American Act or Balance of Payments Program apply.

- Revises the examples at 25.504-1 to clarify how the Buy American Act and the Balance of Payments Programs apply to small business set-asides.

- Adds an alternate to the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, to provide for waiver of the examination of records (12.301(b), 25.1001, and 52.212-5).

- Adds a definition of “United States” to the clauses at 52.225-1, 52.225-3, 52.225-5, 52.225-9, and 52.225-11.

- Adds a definition of “Customs territory of the United States” to the clause at 52.225-8, Duty-Free Entry.

- Clarifies application of the Balance of Payments Program (25.504-1(b), 25.1101(b)(1)(i)(A), and 25.1101(c)(1)).

The restructuring of Part 25 in the proposed rule has been maintained in the final rule. The following list summarizes the renumbering of the clauses at 52.225, which has not changed from the proposed rule:

Current FAR Section	New FAR Section
52.225-1 and -6	52.225-2
52.225-2	52.225-7
52.225-3 and -7	52.225-1
52.225-4	52.225-17
52.225-5	52.225-9
52.225-8	52.225-6
52.225-9	52.225-5
52.225-10	52.225-8
52.225-11	52.225-13

Current FAR Section	New FAR Section
52.225-12	52.225-10
52.225-13	52.225-12
52.225-14	52.225-14
52.225-15 and -22	52.225-11
52.225-18	52.225-15
52.225-19	52.225-16
52.225-20	52.225-4
52.225-21	52.225-3

This rule was not subject to Office of Management and Budget 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 primarily clarifies existing guidance pertaining to acquisition of foreign supplies, services, and construction.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule contains information collection requirements. The Office of Management and Budget has approved the information collection requirements

associated with Part 25 under OMB Control Numbers 9000-0022, 9000-0023, 9000-0024, 9000-0025, 9000-0130, and 9000-0141. The applicable changes to the clause numbers of the provisions and clauses that are covered by these approvals are addressed in the preamble to the proposed rule (63 FR 51642).

List of Subjects in 48 CFR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52:

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.106 in the table following the introductory paragraph by removing the FAR Segment and OMB Control Number in the left columns and adding the FAR Segment and OMB Control Number listed in the right columns as follows:

Remove		Add	
Far segment	OMB Control No.	FAR segment	OMB Control No.
52.225-1	9000-0024	52.225-2	9000-0023 and 9000-0024
52.225-6	9000-0023	52.225-4	9000-0130
52.225-8	9000-0025	52.225-6	9000-0025
52.225-10	9000-0022	52.225-8	9000-0022
52.225-20	9000-0130	52.225-9	9000-0141
		52.225-11	9000-0141

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101 by revising the definitions “Component” and “United States”, and by adding, in alphabetical order, the definitions “Construction” and “End product” to read as follows:

2.101 Definitions.

* * * * *

Component means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9 and 52.225-11, see the definitions in 52.225-9(a) and 52.225-11(a).

Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration,

repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

* * * * *

End product means supplies delivered under a line item of a Government contract.

* * * * *

United States, when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

(1) For use in Subpart 22.8, see the definition at 22.801.

(2) For use in Subpart 22.10, see the definition at 22.1001.

(3) For use in Part 25, see the definition at 25.003.

(4) For use in Subpart 47.4, see the definition at 47.401.

PART 5—PUBLICIZING CONTRACT ACTIONS

4. Amend section 5.301 by revising paragraph (a); and in paragraph (c) by removing “shall” and adding “must” in its place. The revised text reads as follows:

5.301 General.

(a) Except for contract actions described in paragraph (b) of this section, contracting officers must synopsise in the Commerce Business Daily (CBD) awards exceeding \$25,000 that are—

(1) Subject to the Trade Agreements Act (see Subpart 25.4); or

(2) Likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

* * * * *

PART 6—COMPETITION REQUIREMENTS

5. Revise paragraph (d) of section 6.303-1 to read as follows:

6.303-1 Requirements.

* * * * *

(d) If the authority of 6.302-3(a)(2)(i) or 6.302-7 is being cited as a basis for not providing for full and open competition in an acquisition that would otherwise be subject to the Trade Agreements Act (see Subpart 25.4), the contracting officer must forward a copy of the justification, in accordance with agency procedures, to the agency's point of contact with the Office of the United States Trade Representative.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

6. Revise paragraph (b) of section 9.205 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, including eligible products from designated countries under the terms of the Trade Agreements Act (see Subpart 25.4).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

7. Revise paragraph (c) of section 12.205 to read as follows:

12.205 Offers.

* * * * *

(c) Consistent with the requirements at 5.203(b), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items, unless the acquisition is subject to NAFTA or the Trade Agreements Act (see 5.203(h)).

8. Amend section 12.301 by adding a sentence to the end of paragraph (b)(4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * *

(4) * * * Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with 25.1001.

* * * * *

12.504 [Amended]

9. Amend section 12.504 by removing paragraphs (a)(2) through (a)(4) and redesignating (a)(5) through (a)(15) as (a)(2) through (a)(12), respectively.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.101 [Amended]

10. Amend section 13.101 at the end of paragraph (a)(2) by adding the word “and”; by removing paragraph (a)(3); and by redesignating paragraph (a)(4) as (a)(3).

11. Revise paragraph (d) of section 13.302-5 to read as follows:

13.302-5 Clauses.

* * * * *

(d)(1) The contracting officer may use the clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial items (see 12.301).

(2) The clause—

(i) Is a compilation of the most commonly used clauses that apply to simplified acquisitions; and

(ii) May be modified to fit the individual acquisition to add other needed clauses, or those clauses may be added separately. Modifications (*i.e.*, additions, deletions, or substitutions) must not create a void or internal contradiction in the clause. For

example, do not add an inspection and acceptance or termination for convenience requirement unless the existing requirement is deleted. Also, do not delete a paragraph without providing for an appropriate substitute.

(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—Balance of Payments Program, used with Alternate I or Alternate II, if appropriate, instead of the clause at FAR 52.225-1, Buy American Act—Balance of Payments Program—Supplies.

(ii) When acquiring supplies for use outside the United States, delete clause 52.225-1 from the clause list at 52.213-4(b).

PART 14—SEALED BIDDING

12. Revise paragraphs (w) and (x) of section 14.201-6 to read as follows:

14.201-6 Solicitation provisions.

* * * * *

(w) Insert the provision at 52.214-34, Submission of Offers in the English Language, in solicitations that include any of the clauses prescribed in 25.1101 or 25.1102. It may be included in other solicitations when the contracting officer decides that it is necessary.

(x) Insert the provision at 52.214-35, Submission of Offers in U.S. Currency, in solicitations that include any of the clauses prescribed in 25.1101 or 25.1102, unless the contracting officer includes the clause at 52.225-17, Evaluation of Foreign Currency Offers, as prescribed in 25.1103(d). It may be included in other solicitations when the contracting officer decides that it is necessary.

14.409-1 [Amended]

13. Amend section 14.409-1 in the introductory text of paragraph (a)(2) by removing “(see 25.405(e))” and adding “(see 25.408(a)(4))” in its place; and by removing “shall” and adding “must” in its place.

PART 15—CONTRACTING BY NEGOTIATION

14. Revise paragraph (b)(4) of section 15.209 to read as follows:

15.209 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(4) When the head of the agency has waived the examination of records by

the Comptroller General in accordance with 25.1001, use the clause with its Alternate III.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

15. Revise paragraph (h) of section 17.203 to read as follows:

17.203 Solicitations.

* * * * *

(h) Include the value of options in determining if the acquisition will exceed the Trade Agreements Act and North American Free Trade Agreement thresholds.

PART 19—SMALL BUSINESS PROGRAMS

19.1103 [Amended]

15a. In paragraph (a)(2) of section 19.1103, remove “25.402” and add “25.403” in its place.

19.1307 [Amended]

15b. In paragraph (b)(3) of section 19.1307, remove “25.402” and add “25.403” in its place.

16. Revise Part 25 to read as follows:

PART 25—FOREIGN ACQUISITION

Sec.

- 25.000 Scope of part.
- 25.001 General.
- 25.002 Applicability of subparts.
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Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.000 Scope of part.

This part provides policies and procedures for acquiring foreign supplies, services, and construction materials. It implements the Buy American Act, the Balance of Payments Program, trade agreements, and other laws and regulations.

25.001 General.

(a) The Buy American Act—
(1) Restricts the purchase of supplies, that are not domestic end products, for use within the United States. A foreign

end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see Subpart 25.1); and

(2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see Subpart 25.2).

(b) The Balance of Payments Program (see Subpart 25.3) is similar to the Buy American Act in its implementation, except that it applies to the purchase of supplies for use outside the United States and construction materials for construction contracts performed outside the United States.

(c) The restrictions in the Buy American Act and the Balance of Payments Program are not applicable in acquisitions subject to certain trade agreements (see Subpart 25.4). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in Subpart 25.4.

(d) The test to determine the country of origin for an end product under the trade agreements is different from the test to determine the country of origin for an end product under the Buy American Act (see the various country “end product” definitions in 25.003). The Buy American Act uses a two-part test to define a “domestic end product” (manufacture in the United States and a formula based on cost of domestic components). Under the trade agreements, the test to determine country of origin is “substantial transformation” (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(e) On April 22, 1992, the President made a determination under section 305 of the Trade Agreements Act to impose sanctions against some European Union countries for discriminating against U.S. products and services (see Subpart 25.6).

25.002 Applicability of subparts.

The following table shows the applicability of the subparts. Subpart 25.5 provides comprehensive procedures for offer evaluation and examples.

	Subpart	Supplies for use		Construction		Services performed	
		Inside U.S.	Out-side U.S.	Inside U.S.	Out-side U.S.	Inside U.S.	Out-side U.S.
25.1	Buy American Act—Supplies	X	.....	.....	.....	.....	.....
25.2	Buy American Act—Construction Materials .....	.....	.....	X	.....	.....	.....
25.3	Balance of Payments Program .....	.....	X	.....	X	.....	.....
25.4	Trade Agreements	X	X	X	X	X	X
25.5	Evaluating Foreign Offers—Supply Contracts	X	X	.....	.....	.....	.....
25.6	Trade Sanctions	X	X	X	X	X	X
25.7	Prohibited Sources	X	X	X	X	X	X
25.8	Other International Agreements and Coordination	X	X	.....	X	.....	X
25.9	Customs and Duties	X	.....	.....	.....	.....	.....
25.10	Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11	Solicitation Provisions and Contract Clauses	X	X	X	X	X	X

25.003 Definitions.

As used in this part—
Canadian end product means an article that—

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

Caribbean Basin country means any of the following countries: 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, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Tobago and Trinidad.

Caribbean Basin country end product means an article that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin 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 Caribbean Basin 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. The term excludes products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

- (i) Textiles and apparel articles that are subject to textile agreements;
- (ii) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;
- (iii) Tuna, prepared or preserved in any manner in airtight containers;
- (iv) Petroleum, or any product derived from petroleum; and
- (v) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply.

Civil aircraft and related articles means—

- (1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;
- (2) The engines (and parts and components for incorporation into the engines) of these aircraft;
- (3) Any other parts, components, and subassemblies for incorporation into the aircraft; and
- (4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft and without regard to

whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

Construction material means an article, material, or supply brought to the construction site by a contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

- (1) For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Customs territory of the United States means the States, the District of Columbia, and Puerto Rico.

Designated country means any of the following countries:

- Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso,

Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan, Kiribati, Korea, Republic of Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen

Designated country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a designated 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 designated 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.

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Domestic end product means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for

processing in the United States is considered domestic.

Domestic offer means an offer of a domestic end product. When the solicitation specifies that award will be made on a group of line items, a domestic offer means an offer where the proposed price of the domestic end products exceeds 50 percent of the total proposed price of the group.

Eligible offer means an offer of an eligible product. When the solicitation specifies that award will be made on a group of line items, an eligible offer means a foreign offer where the combined proposed price of the eligible products and the domestic end products exceeds 50 percent of the total proposed price of the group.

Eligible product means a foreign end product that is not subject to discriminatory treatment under either the Buy American Act or the Balance of Payments Program, due to applicability of a trade agreement to a particular acquisition.

Foreign construction material means a construction material other than a domestic construction material.

Foreign contractor means a contractor or subcontractor organized or existing under the laws of a country other than the United States.

Foreign end product means an end product other than a domestic end product.

Foreign offer means any offer other than a domestic offer.

Israeli end product means an article that—

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

Mexican end product means an article that—

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

Noneligible offer means an offer of a noneligible product.

Noneligible product means a foreign end product that is not an eligible product.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) 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 NAFTA 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.

Sanctioned European Union country construction means construction to be performed in a sanctioned European Union member state.

Sanctioned European Union country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a sanctioned European Union (EU) member state; 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 sanctioned EU member state 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 these incidental services does not exceed that of the article itself.

Sanctioned European Union country services means services to be performed in a sanctioned European Union member state.

Sanctioned European Union member state means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

United States means the 50 States and the District of Columbia, U.S. territories

and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States 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.

Subpart 25.1—Buy American Act—Supplies

25.100 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a–10d) and Executive Order 10582, December 17, 1954. It applies to supplies acquired for use in the United States.

(b) The supply portion of a contract for services that involves the furnishing of supplies (*e.g.*, lease) exceeds the micro-purchase threshold.

25.101 General.

(a) The Buy American Act restricts the purchase of supplies that are not domestic end products. For manufactured end products, the Buy American Act uses a two-part test to define a domestic end product.

(1) The article must be manufactured in the United States; and

(2) The cost of domestic components must exceed 50 percent of the cost of all the components.

(b) The Buy American Act applies to small business set-asides. A manufactured product of a small business concern is a U.S.-made end product, but is not a domestic end product unless it meets the component test in paragraph (a)(2) of this section.

(c) Exceptions that allow the purchase of a foreign end product are listed at 25.103. The unreasonable cost exception is implemented through the use of an evaluation factor applied to low foreign offers that are not eligible offers. The evaluation factor is not used to provide a preference for one foreign offer over another. Evaluation procedures and examples are provided in Subpart 25.5.

25.102 Policy.

Except as provided in 25.103, acquire only domestic end products for public use inside the United States.

25.103 Exceptions.

When one of the following exceptions applies, the contracting officer may acquire a foreign end product without regard to the restrictions of the Buy American Act:

(a) *Public interest.* The head of the agency may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(b) *Nonavailability.* (1) A nonavailability determination has been made for the articles listed in 25.104.

(2)(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 synopsisized in accordance with 5.201.

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

(c) *Unreasonable cost.* The contracting officer may determine that the cost of a domestic end product would be unreasonable, in accordance with 25.105 and Subpart 25.5.

(d) *Resale.* The contracting officer may purchase foreign end products specifically for commissary resale.

25.104 Nonavailable articles.

(a) The following articles have been determined to be nonavailable in accordance with 25.103(b):

Acetylene, black.
Agar, bulk.
Anise.
Antimony, as metal or oxide.
Asbestos, amosite, chrysotile, and crocidolite.
Bananas.
Bauxite.
Beef, corned, canned.
Beef extract.
Bephenium hydroxynapthoate.
Bismuth.
Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
Brazil nuts, unroasted.
Cadmium, ores and flue dust.
Calcium cyanamide.

Capers.
Cashew nuts.
Castor beans and castor oil.
Chalk, English.
Chestnuts.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
Cocoa beans.
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean.
Colchicine alkaloid, raw.
Copra.
Cork, wood or bark and waste.
Cover glass, microscope slide.
Crane rail (85-pound per foot).
Cryolite, natural.
Dammar gum.
Diamonds, industrial, stones and abrasives.
Emetine, bulk.
Ergot, crude.
Erythrityl tetranitrate.
Fair linen, altar.
Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.
Goat and kidskins.
Graphite, natural, crystalline, crucible grade.
Hand file sets (Swiss pattern).
Handsewing needles.
Hemp yarn.
Hog bristles for brushes.
Hyoscine, bulk.
Ipecac, root.
Iodine, crude.
Kaurigum.
Lac.
Leather, sheepskin, hair type.
Lavender oil.
Manganese.
Menthol, natural bulk.
Mica.
Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).
Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (also known as picrite).
Nux vomica, crude.
Oiticica oil.
Olive oil.
Olives (green), pitted or unpitted, or stuffed, in bulk.
Opium, crude.
Oranges, mandarin, canned.
Petroleum, crude oil, unfinished oils, and finished products.
Pine needle oil.
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
Pyrethrum flowers.
Quartz crystals.
Quebracho.
Quinidine.
Quinine.
Rabbit fur felt.
Radium salts, source and special nuclear materials.
Rosettes.

Rubber, crude and latex.
 Rutile.
 Santonin, crude.
 Secretin.
 Shellac.
 Silk, raw and unmanufactured.
 Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
 Spices and herbs, in bulk.
 Sugars, raw.
 Swords and scabbards.
 Talc, block, steatite.
 Tantalum.
 Tapioca flour and cassava.
 Tartar, crude; tartaric acid and cream of tartar in bulk.
 Tea in bulk.
 Thread, metallic (gold).
 Thyme oil.
 Tin in bars, blocks, and pigs.
 Triprolidine hydrochloride.
 Tungsten.
 Vanilla beans.
 Venom, cobra.
 Wax, carnauba.
 Wire glass.
 Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
 Yarn, 50 Denier rayon.

(b) The determination in paragraph (a) of this section does not apply if the contracting officer learns 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 quantities of a satisfactory quality. The contracting officer must amend the solicitation if purchasing the article, or if purchasing an end product that could contain such an article as a component, and must specify in all new solicitations 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. In addition, the contracting officer must 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.

25.105 Determining reasonableness of cost.

(a) The contracting officer—
 (1) Must use the evaluation factors in paragraph (b) of this section unless the head of the agency makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency acquisitions, the agency evaluation factors must be published in agency regulations; and
 (2) Must not apply evaluation factors to offers of eligible products if the

acquisition is subject to a trade agreement under Subpart 25.4.

(b) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American Act apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—

(1) 6 percent, if the lowest domestic offer is from a large business concern; or
 (2) 12 percent, if the lowest domestic offer is from a small business concern.

The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see Subpart 19.5).

(c) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. (See evaluation procedures at Subpart 25.5.)

Subpart 25.2—Buy American Act—Construction Materials

25.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a-10d) and Executive Order 10582, December 17, 1954. It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

25.201 Policy.

Except as provided in 25.202, use only domestic construction materials in construction contracts performed in the United States.

25.202 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may acquire foreign construction materials without regard to the restrictions of the Buy American Act:

(1) *Impracticable or inconsistent with public interest.* The head of the agency may determine that application of the restrictions of the Buy American Act to a particular construction material would be impracticable or would be inconsistent with the public interest. The public interest exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(2) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not

mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 25.104(a) and the procedures at 25.104(b) also apply if any of those articles are acquired as construction materials.

(3) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with 25.204.

(b) *Determination and findings.* When a determination is made for any of the reasons stated in this section that certain foreign construction materials may be used, the contracting officer must list the excepted materials in the contract. The agency must make the findings justifying the exception available for public inspection.

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of \$6,909,500 or more, see 25.405. If the acquisition value is \$7,143,000 or more, also see 25.403.

25.203 Preaward determinations.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of the Buy American Act for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either 52.225-10 or 52.225-12, whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either 52.225-9 or 52.225-11, whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

25.204 Evaluating offers of foreign construction material.

(a) Offerors proposing to use foreign construction material other than that listed by the Government in the applicable clause at 52.225-9, paragraph (b)(2), or 52.225-11, paragraph (b)(3), or excepted under the Trade Agreements Act or NAFTA (paragraph (b)(2) of 52.225-11), must provide the information required by paragraphs (c) and (d) of the respective clauses.

(b) Unless the head of the agency specifies a higher percentage, the contracting officer must add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of

the Buy American Act based on the unreasonable cost of domestic construction materials. In the case of a tie, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(c) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

(d) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(2) of 52.225-9, or paragraph (b)(3) of 52.225-11), the contracting officer must add the excepted materials to the list in the contract clause.

25.205 Postaward determinations.

(a) If a contractor requests a determination regarding the inapplicability of the Buy American Act after contract award, the contractor must explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of the Buy American Act made after contract award on information required by paragraphs (c) and (d) of the applicable clause at 52.225-9 or 52.225-11 and/or other readily available information.

(c) If a determination, under 25.202(a), is made after contract award that an exception to the Buy American Act applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is at least the differential established in 25.202(a) or in accordance with agency procedures.

25.206 Noncompliance.

The contracting officer must—

(a) Review allegations of Buy American Act violations;

(b) Unless fraud is suspected, notify the contractor of the apparent

unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of the Buy American Act in accordance with 25.205.

(2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to the Buy American Act applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debaring official in accordance with Subpart 9.4. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

Subpart 25.3—Balance of Payments Program

25.300 Scope of subpart.

This subpart provides policies and procedures implementing the Balance of Payments Program. It applies to contracts for the purchase of supplies for use outside the United States, and contracts for construction, alteration, or repair of any public building or public work outside the United States.

25.301 General.

The Balance of Payments Program restricts the purchase of supplies that are not domestic end products, for use

outside the United States, and restricts the use of construction materials that are not domestic, for performance of construction contracts outside the United States. Its restrictions are similar to those of the Buy American Act. It uses the same definitions and evaluation procedures, except that a 50 percent factor generally is used to determine unreasonable cost. Exceptions to the Balance of Payments Program, especially for construction materials, are generally determined prior to solicitation and assignment of contracting responsibility. The contracting officer must identify excepted supplies and construction materials in the contract.

25.302 Policy.

Except as provided in 25.303, acquire only domestic end products for use outside the United States, and use only domestic construction materials for construction, repair, or maintenance of real property outside the United States.

25.303 Exceptions.

A foreign end product may be acquired for use outside the United States, or a foreign construction material may be used in construction outside the United States, without regard to the restrictions of the Balance of Payments Program if—

(a) The estimated cost of the end product does not exceed the simplified acquisition threshold;

(b) The end product or construction material is listed at 25.104, or the head of the contracting activity determines that a requirement—

(1) Can only be filled by a foreign end product or construction material (see 25.103(b));

(2) Is for end products or construction materials that, by their nature or as a practical matter, can only be acquired in the geographic area concerned, *e.g.*, ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick; or

(3) Is for perishable subsistence products and delivery from the United States would significantly impair their quality at the point of consumption;

(c) The acquisition of foreign end products is required by a treaty or executive agreement between governments;

(d) The end products are—

(1) Petroleum products; or

(2) For commissary resale;

(e) The end products are eligible products subject to the Trade

Agreements Act, NAFTA, or the Israeli Trade Act, or the construction material is subject to the Trade Agreements Act or NAFTA;

(f) The cost of the domestic end product or construction material (including transportation and handling costs) exceeds the cost of the foreign end product or construction material by more than 50 percent, or a higher percentage specifically authorized by the head of the agency; or

(g) The head of the agency has determined that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material or that it is impracticable to apply the restrictions of the Balance of Payments Program to the construction material.

25.304 Procedures.

(a) *Solicitation of offers.* The contracting officer must identify, in the solicitation, supplies and construction materials known in advance to be excepted from the procedures of this subpart.

(b) *Evaluation of offers.* The contracting officer must—

(1) Evaluate offers for supplies in accordance with Subpart 25.5; and

(2) Evaluate offers proposing foreign construction material by using the procedures at 25.204, except that a factor of 50 percent or a higher percentage (see 25.303(f)) must be applied to foreign construction material proposed for exception from the requirements of the Balance of Payments Program on the basis of unreasonable cost of domestic construction materials.

(c) *Other procedures for construction.* For construction contracts, the procedures at 25.203, 25.205, and 25.206, for determinations and noncompliance under the Buy American Act, are also applicable to determinations and noncompliance under the Balance of Payments Program.

Subpart 25.4—Trade Agreements

25.400 Scope of subpart.

(a) This subpart provides policies and procedures applicable to acquisitions that are subject to

(1) The Trade Agreements Act (the Agreement on Government Procurement, as approved by Congress in the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), and as amended by the Uruguay Round Agreements Act (Pub. L. 103-465));

(2) The Caribbean Basin Trade Initiative (the determination of the U.S. Trade Representative that end products granted duty-free entry under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq.*) must be treated as eligible products under the Trade Agreements Act);

(3) 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));

(4) 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

(5) 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.

25.401 Exceptions.

(a) This subpart does not apply to—

(1) Acquisitions set aside for small businesses;

(2) Acquisitions of arms, ammunition, or war materials, or purchases indispensable for national security or for national defense purposes, including all services purchased in support of military forces located overseas;

(3) Acquisitions of end products for resale;

(4) Acquisitions under Subpart 8.6, Acquisition from Federal Prison Industries, Inc., and Subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled;

(5) Other acquisitions not using full and open competition, if authorized by Subpart 6.2 or 6.3, when the limitation of competition would preclude use of the procedures of this subpart (but see 6.303-1(d)); or sole source acquisitions justified in accordance with 13.501(a); and

(6) Acquisitions of the following excluded services:

(i) Automatic data processing (ADP) telecommunications and transmission services, except enhanced (*i.e.*, value-added) telecommunications services.

(ii) Research and development.

(iii) Transportation services (including launching services, but not including travel agent services).

(iv) Utility services.

(b)(1) Other services not covered by the Trade Agreements Act are—

(i) Dredging; and

(ii) Management and operation contracts to certain Government or privately owned facilities used for Government purposes, including Federally Funded Research and Development Centers (FFRDCs).

(2) Other services not covered by NAFTA are—

(i) 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) (Federal Service Code from the Federal Procurement Data System Product/Service Code Manual indicated in parentheses);

(ii) Operation of all facilities by the Department of Defense, Department of Energy, or the National Aeronautics and Space Administration; and all Government-owned research and development facilities or Government-owned environmental laboratories;

(iii) Maintenance, repair, modification, rebuilding and installation of equipment related to ships; and

(iv) Nonnuclear ship repair.

25.402 General.

The trade agreements waive the applicability of the Buy American Act or the Balance of Payments Program for some foreign supplies and construction materials from certain countries. The Trade Agreements Act and NAFTA specify procurement procedures designed to ensure fairness. The value of the acquisition is a determining factor in the applicability of the trade agreements. When the restrictions of the Buy American Act or the Balance of Payments Program are waived for eligible products, offers of such products (eligible offers) receive equal consideration with domestic offers. Under the Trade Agreements Act, only U.S.-made end products or eligible products may be acquired (also see 25.403(c)). See Subpart 25.5 for evaluation procedures for supply contracts subject to trade agreements.

25.403 Trade Agreements Act.

(a) *General.* The Agreement on Government Procurement of the Trade Agreements Act—

(1) Waives application of the Buy American Act and the Balance of Payments Program to the end products and construction materials of designated countries;

(2) Prohibits discriminatory practices based on foreign ownership;

(3) Restricts purchases to end products identified in 25.403(c);

(4) Requires certain procurement procedures designed to ensure fairness (see 25.408).

(b) *Thresholds.* (1) Except as provided in 25.401, the Trade Agreements Act applies to an acquisition for supplies or services if the estimated value of the acquisition is \$186,000 or more; the

Trade Agreements Act applies to an acquisition for construction if the estimated value of the acquisition is \$7,143,000 or more. These dollar thresholds became effective January 1, 1998, and are subject to revision by the U.S. Trade Representative approximately every 2 years (see Executive Order 12260).

(2) To determine whether the Trade Agreements Act applies to the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase), calculate the estimated acquisition value as follows:

(i) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of the acquisition.

(ii) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(iii) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by the total number of months that ordering would be possible under the proposed contract, *i.e.*, the initial ordering period plus any optional ordering periods.

(iv) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(3) The estimated value includes the value of all options.

(4) 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 Trade Agreements Act applies. Do not divide any acquisition with the intent of reducing the estimated value of the acquisition below the dollar threshold of the Trade Agreements Act.

(c) *Purchase restriction.* (1) In acquisitions subject to the Trade Agreements Act, acquire only U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products) unless offers for such end products are either not received or are insufficient to fulfill the requirements.

(2) This restriction does not apply to purchases by the Department of Defense from a country with which it has entered into a reciprocal agreement, as provided in departmental regulations.

25.404 Caribbean Basin Trade Initiative.

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions subject to the Trade

Agreements Act, Caribbean Basin country end products must be treated as eligible products. This determination is effective until September 30, 1999, except that, for products of Panama, this determination is effective until September 30, 2000. The U.S. Trade Representative may extend these dates through a document in the **Federal Register**.

25.405 North American Free Trade Agreement (NAFTA).

(a) An acquisition of supplies is not subject to NAFTA if the estimated value of the acquisition is \$25,000 or less. For acquisitions subject to NAFTA, evaluate offers of NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program, except that for acquisitions with an estimated value of less than \$53,150, only Canadian end products are eligible products. Eligible products from NAFTA countries are entitled to the nondiscriminatory treatment of the Trade Agreements Act. NAFTA does not prohibit the purchase of other foreign end products.

(b) NAFTA applies to construction materials if the estimated value of the construction contract is \$6,909,500 or more.

(c) The procedures in 25.408 apply to the acquisition of NAFTA country services, other than services identified in 25.401. NAFTA country services are services provided by a firm established in a NAFTA country under service contracts with an estimated acquisition value of \$53,150 or more (\$6,909,500 or more for construction).

25.406 Israeli Trade Act.

Acquisitions of supplies by most agencies are subject to the Israeli Trade Act, if the estimated value of the acquisition is \$50,000 or more but does not exceed the Trade Agreements Act threshold for supplies (see 25.403(b)(1)). Agencies other than the Department of Defense, the Department of Energy, the Department of Transportation, the Bureau of Reclamation of the Department of the Interior, the Federal Housing Finance Board, and the Office of Thrift Supervision must evaluate offers of Israeli end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Israeli Trade Act does not prohibit the purchase of other foreign end products.

25.407 Agreement on Trade in Civil Aircraft.

Under the authority of Section 303 of the Trade Agreements Act, the U.S. Trade Representative has waived the

Buy American Act for civil aircraft and related articles, that meet the substantial transformation test of the Trade Agreements Act, from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Austria, Belgium, Bulgaria, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Macao, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, and the United Kingdom.

25.408 Procedures.

(a) If the Trade Agreements Act or NAFTA applies (see 25.401), the contracting officer must—

(1) Comply with the requirements of 5.203, Publicizing and response time;

(2) Comply with the requirements of 5.207, Preparation and Transmittal of Synopses, including the appropriate "Numbered Note" (5.207(e)(2)) for contracts that are subject to the Trade Agreements Act;

(3) Not include technical requirements in solicitations solely to preclude the acquisition of eligible products;

(4) Specify in solicitations that offerors must submit offers in the English language and in U.S. dollars (see 5.214–34, Submission of Offers in the English Language, and 5.214–35, Submission of Offers in U.S. Currency, or paragraph (c)(5) of 5.215–1, Instruction to Offerors—Competitive Acquisitions); and

(5) Provide unsuccessful offerors from designated or NAFTA countries notice in accordance with 14.409–1 or 15.503.

(b) See Subpart 25.5 for evaluation procedures and examples.

Subpart 25.5—Evaluating Foreign Offers—Supply Contracts

25.501 General.

The contracting officer—

(a) Must apply the evaluation procedures of this subpart to each line item of an offer unless either the offer or the solicitation specifies evaluation on a group basis (see 25.503);

(b) May rely on the offeror's certification of end product origin when evaluating a foreign offer;

(c) Must identify and reject offers of end products that are prohibited or sanctioned in accordance with Subparts 25.6 and 25.7; and (d) Must not use the Buy American Act and Balance of Payments Program evaluation factors prescribed in this subpart to provide a preference for one foreign offer over another foreign offer.

25.502 Application.

(a) Unless otherwise specified in agency regulations, perform the following steps in the order presented:

(1) Eliminate all offers or offerors that are unacceptable for reasons other than price; *e.g.*, nonresponsive, debarred or suspended, sanctioned (see Subpart 25.6), or a prohibited source (see Subpart 25.7).

(2) Rank the remaining offers by price.

(3) If the solicitation specifies award on the basis of factors in addition to cost or price, apply the evaluation factors as specified in this section and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(b) For acquisitions subject to the Trade Agreements Act (see 25.401 and 25.403(b))—

(1) Consider only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products, unless no offers of such end products were received;

(2) If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic end products, award on the low offer. Otherwise, evaluate in accordance with agency procedures; and

(3) If there were no offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA 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 subject to the Trade Agreements Act, but subject to the Buy American Act or the Balance of Payments Program (NAFTA or the Israeli Trade Act also may apply), the following applies:

(1) If the low offer is a domestic offer or an eligible offer under NAFTA or the Israeli Trade Act, award on that offer.

(2) If the low offer is a noneligible offer and there were no domestic offers (see 25.103(b)(3)), award on the low offer.

(3) If the low offer is a noneligible offer and there is an eligible offer that is lower than the lowest domestic offer, award on the low offer. The Buy American Act and the Balance of Payments Program provide an evaluation preference only for domestic offers.

(4) Otherwise, apply the appropriate evaluation factor provided in 25.105 or 25.304 to the low offer.

(i) If the evaluated price of the low offer remains less than the lowest domestic offer, award on the low offer.

(ii) If the price of the lowest domestic offer is less than the evaluated price of the low offer, award on the lowest domestic offer.

(d) *Ties.* (1) If application of an evaluation factor results in a tie between a domestic offer and a foreign offer, award on the domestic offer.

(2) If no evaluation preference was applied (*i.e.*, offers afforded nondiscriminatory treatment under the Buy American Act or Balance of Payments Program), resolve ties between domestic and foreign offers by a witnessed drawing of lots by an impartial individual.

(3) Resolve ties between foreign offers from small business concerns (under the Buy American Act and Balance of Payments Program, a small business offering a manufactured article that does not meet the definition of “domestic end product” is a foreign offer) or foreign offers from a small business concern and a large business concern in accordance with 14.408–6(a).

25.503 Group offers.

(a) If the solicitation or an offer specifies that award can be made only on a group of line items or on all line items contained in the solicitation or offer, reject the offer—

(1) If any part of the award would consist of sanctioned or prohibited end products (see Subparts 25.6 and 25.7); or

(2) If the Trade Agreements Act applies and any part of the offer consists of items restricted in accordance with 25.403(c).

(b) If an offer restricts award to a group of line items or to all line items contained in the offer, determine for each line item whether to apply an evaluation factor (see 25.504–4, Example 1).

(1) First, evaluate offers that do not specify an award restriction on a line item basis in accordance with 25.502, determining a tentative award pattern by selecting for each line item the offer with the lowest evaluated price.

(2) Evaluate an offer that specifies an award restriction against the offered prices of the tentative award pattern, applying the appropriate evaluation factor on a line item basis.

(3) Compute the total evaluated price for the tentative award pattern and the offer that specified an award restriction.

(4) Unless the total evaluated price of the offer that specified an award restriction is less than the total evaluated price of the tentative award pattern, award based on the tentative award pattern.

(c) If the solicitation specifies that award will be made only on a group of line items or all line items contained in the solicitation, determine the category of end products on the basis of each line item, but determine whether to apply an

evaluation factor on the basis of the group of items (see 25.504–4, Example 2).

(1) If the proposed price of domestic end products exceeds 50 percent of the total proposed price of the group, evaluate the entire group as a domestic offer. Evaluate all other groups as foreign offers.

(2) For foreign offers, if the proposed price of domestic end products and eligible products exceeds 50 percent of the total proposed price of the group, evaluate the entire group as an eligible offer.

(3) Apply the evaluation factor to the entire group in accordance with 25.502.

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)). Although these examples are generally constructed in terms of the Buy American Act, the same evaluation procedures would apply under the Balance of Payments Program. The evaluation factor may change as provided in agency regulations.

25.504–1 Buy American Act/Balance of Payments Program.

(a)(1) *Example 1.*

Offer A ...	\$12,000	Domestic end product, small business.
Offer B ...	11,700	Domestic end product, small business.
Offer C ...	10,000	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. Since the acquisition value is less than \$25,000 and the acquisition is set aside, none of the trade agreements apply. 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)). Since Offer B is a domestic offer, apply the 12 percent factor to Offer C (see 25.105(b)(2)). The resulting evaluated price of \$11,200 remains lower than Offer B. The cost of Offer B is therefore unreasonable (see 25.105(c)). Award on Offer C at \$10,000 (see 25.502(c)(4)(i)).

(b)(1) *Example 2.*

Offer A ...	\$110,000	Domestic end product, small business.
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Offer B ... 107,000 Domestic end product, small business.
 Offer C ... 102,000 U.S.-made end product (not domestic), small business.

(2) *Analysis:* This acquisition is for end products for use outside the United States and is set aside for small business concerns. Since the value of the acquisition exceeds the simplified acquisition threshold, the Balance of Payments Program applies. While the acquisition value exceeds \$25,000, none of the trade agreements apply because the acquisition is set aside. 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 50 percent factor, the evaluated price of Offer C is \$153,000. Award on Offer B at \$107,000 (see 25.502(c)(4)(ii)).

25.504-2 Trade Agreements Act/Caribbean Basin Trade Initiative/NAFTA.

Example 1.
 Offer A ... \$204,000 U.S.-made end product (not domestic).

Offer B ... 203,000 U.S.-made end product (domestic), small business.
 Offer C ... 200,000 Eligible product.
 Offer D ... 195,000 Noneligible product (not U.S.-made).

Analysis: Eliminate Offer D because the Trade Agreements Act applies and there is an offer of a U.S.-made or an eligible product (see 25.502(b)(1)). If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic offers, it is unnecessary to determine if U.S.-made end products are domestic (large or small business). No further analysis is necessary. Award on the low remaining offer, Offer C (see 25.502(b)(2)).

25.504-3 NAFTA/Israeli Trade Act.

(a) Example 1.
 Offer A ... \$105,000 Domestic end product, small business.
 Offer B ... 100,000 Eligible product.

Analysis: Since the low offer is an eligible offer, award on the low offer (see 25.502(c)(1)).

(b) Example 2.
 Offer A ... \$105,000 Eligible product.
 Offer B ... 103,000 Noneligible product.

Analysis: Since the acquisition is not subject to the Trade Agreements Act, the contracting officer can consider the noneligible offer. Since no domestic offer was received, make a nonavailability determination and award on Offer B (see 25.502(c)(2)).

(c) Example 3.
 Offer A ... \$105,000 Domestic end product, large business.
 Offer B ... 103,000 Eligible product.
 Offer C ... 100,000 Noneligible product.

Analysis: Since the acquisition is not subject to the Trade Agreements Act, the contracting officer can consider the noneligible offer. Because the eligible offer (Offer B) is lower than the domestic offer (Offer A), no evaluation factor applies to the low offer (Offer C). Award on the low offer (see 25.502(c)(3)).

25.504-4 Group award basis.

(a) Example 1.

Item	Offers		
	A	B	C
1	DO = \$55,000	EL = \$56,000	NEL = \$50,000
2	NEL = 13,000	EL = 10,000	EL = 13,000
3	NEL = 11,500	DO = 12,000	DO = 10,000
4	NEL = 24,000	EL = 28,000	NEL = 22,000
5	DO = 18,000	NEL = 10,000	DO = 14,000
	121,500	116,000	109,000

Key: DO = Domestic end product; EL = Eligible product; NEL = Noneligible product.

Problem: Offeror C specifies all-or-none award. Assume all offerors are large businesses. The Trade Agreements Act does not apply.

Analysis: (see 25.503)
 STEP 1: Evaluate Offers A & B before considering Offer C and determine which offer has the lowest evaluated cost for each line item (the tentative award pattern):

Item 1: Low offer A is domestic; select A.
Item 2: Low offer B is eligible; do not apply factor; select B.

Item 3: Low offer A is noneligible and Offer B is a domestic offer. Apply a 6 percent factor to Offer A. The evaluated price of Offer A is higher than Offer B; select B.

Item 4: Low offer A is noneligible. Since neither offer is a domestic offer, no evaluation factor applies; select A.

Item 5: Low offer B is noneligible; apply a 6 percent factor to Offer B. Offer A is still higher than Offer B; select B.

STEP 2: Evaluate Offer C against the tentative award pattern for Offers A and B:

Item	Offers		
	Low offer	Tentative award pattern from A and B	C
1	A	DO=\$55,000	*NEL=\$53,000
2	B	EL=10,000	EL=13,000
3	B	DO=12,000	DO=10,000
4	A	NEL=24,000	NEL=22,000
5	B	NEL=10,600	DO=14,000

Item	Offers		
	Low offer	Tentative award pattern from A and B	C
		111,600	112,000

* Offer + 6 percent.

On a line item basis, apply a factor to any noneligible offer if the other offer for that line item is domestic.

For Item 1, apply a factor to Offer C because Offer A is domestic and the acquisition was not subject to the Trade Agreements Act. The evaluated price of Offer C, Item 1, becomes \$53,000 (\$50,000 plus 6

percent). Apply a factor to Offer B, Item 5, because it is a noneligible product and Offer C is domestic. The evaluated price of Offer B is \$10,600 (\$10,000 plus 6 percent). Evaluate the remaining items without applying a factor.

STEP 3: The tentative unrestricted award pattern from Offers A and B is lower than the

evaluated price of Offer C. Award the combination of Offers A and B. Note that if Offer C had not specified all-or-none award, award would be made on Offer C for line items 1, 3, and 4, totaling an award of \$82,000.

(b) Example 2.

Item	Offers		
	A	B	C
1	DO=\$50,000	EL=\$50,500	NEL=\$50,000
2	NEL=10,300	NEL=10,000	EL=10,200
3	EL=20,400	EL=21,000	NEL=20,200
4	DO=10,500	DO=10,300	DO=10,400
	91,200	91,800	90,800

Problem: The solicitation specifies award on a group basis. Assume the Buy American Act applies and the acquisition cannot be set aside for small business concerns. All offerors are large businesses.

Analysis: (see 25.503(c))

STEP 1: Determine which of the offers are domestic (see 25.503(c)(1)):

	Domestic [percent]	Determination
A	60,500/ 91,200=66.3%	Domestic
B	10,300/ 91,800=11.2%	Foreign
C	10,400/ 90,800=11.5%	Foreign

STEP 2: Determine whether foreign offers are eligible or noneligible offers (see 25.503(c)(2)):

	Domestic + eligible [percent]	Determination
A	N/A	Domestic
B	81,800/ 91,800=89.1%	Eligible
C	20,600/ 90,800=22.7%	Noneligible

STEP 3: Determine whether to apply an evaluation factor (see 25.503(c)(3)). The low offer (Offer C) is a foreign offer. There is no eligible offer lower than the domestic offer. Therefore, apply the factor to the low offer. Addition of the 6 percent factor (use 12 percent if Offer A is a small business) to Offer C yields an evaluated price of \$96,248 (\$90,800 + 6 percent). Award on Offer A (see 25.502(c)(4)(ii)). Note that, if Offer A were greater than Offer B, an evaluation factor would not be applied and award would be on Offer C (see 25.502(c)(3)).

Subpart 25.6—Trade Sanctions

25.600 Scope of subpart.

This subpart implements sanctions imposed by the President pursuant to

Section 305(g)(1) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)), on European Union (EU) member states that discriminate against U.S. products or services (sanctioned EU member states). This subpart does not apply to contracts for supplies or services awarded and performed outside the United States, or to the Department of Defense. For thresholds unique to individual agencies, see agency regulations.

25.601 Policy.

(a) Except as provided in 25.602, agencies must not award contracts for—

(1) Sanctioned EU country end products with an estimated acquisition value less than \$186,000;

(2) Sanctioned EU country construction with an estimated acquisition value less than \$7,143,000; or

(3) Sanctioned EU country services as follows (Federal Service Code or Category from the Federal Procurement Data System Product/Service Code Manual is indicated in parentheses):

(i) Service contracts regardless of acquisition value for—

(A) All transportation services, including launching services (all V codes, J019, J998, J999, and K019);

(B) Dredging (Y216 and Z216);

(C) Management and operation of certain Government or privately owned facilities used for Government purposes, including federally funded research and development centers (all M codes);

(D) Development, production or coproduction of program material for broadcasting, such as motion pictures (T006 and T016);

(E) Research and development (all A codes);

(F) Airport concessions (S203);

(G) Legal services (R418);

(H) Hotel and restaurant services (S203);

(I) Placement and supply of personnel services (V241 and V251);

(J) Investigation and security services (S206, S211, and R423);

(K) Education and training services (all U codes and R419);

(L) Health and social services (all O and G codes);

(M) Recreational, cultural, and sporting services (G003); or

(N) Telecommunications services (encompassing only voice telephony, telex, radio telephony, paging, and satellite services) (S1, D304, D305, D316, D317, and D399).

(ii) All other service contracts with an estimated acquisition value less than \$186,000.

(b) Determine the applicability of sanction thresholds in the manner provided at 25.403(b).

25.602 Exceptions.

(a) The sanctions in 25.601 do not apply to—

(1) Purchases at or below the simplified acquisition threshold awarded using simplified acquisition procedures;

(2) Total small business set-asides in accordance with 19.502-2;

(3) Contracts in support of U.S. national security interests; or

(4) Contracts for essential spare, repair, or replacement parts not otherwise available from nonsanctioned countries.

(b)(1) The head of the agency, without power of redelegation, may authorize the award of a contract or class of contracts for sanctioned EU country end products, services, and construction, the purchase of which is otherwise prohibited by 25.601(a), if the head of the agency determines that such action is necessary—

(i) In the public interest;
 (ii) To avoid the restriction of competition in a manner that would limit the acquisition in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or

(iii) Because there would be or are an insufficient number of potential or actual offerors to ensure the acquisition of services, articles, materials, or supplies of requisite quality at competitive prices.

(2) When the head of the agency makes a determination in accordance with paragraph (b)(1) of this section, the agency must notify the U.S. Trade Representative within 30 days after contract award.

Subpart 25.7—Prohibited Sources

25.701 Restrictions.

(a) The Government generally does not acquire supplies or services that cannot be imported lawfully into the United States. Therefore, even for overseas use, agencies and their contractors and subcontractors must not acquire any supplies or services originating from sources within, or that were located in or transported from or through—

- (1) Cuba (31 CFR part 515);
- (2) Iran (31 CFR part 560);
- (3) Iraq (31 CFR part 575);
- (4) Libya (31 CFR part 550);
- (5) North Korea (31 CFR part 500); or
- (6) Sudan (31 CFR part 538).

(b) Agencies and their contractors and subcontractors must not acquire any supplies or services from entities controlled by the Government of Iraq or other specially designated nationals (31 CFR Chapter V, Appendix A).

25.702 Source of further information.

Questions concerning the restrictions in 25.701 should be referred to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220 (Telephone (202) 622-2520).

Subpart 25.8—Other International Agreements and Coordination

25.801 General.

Treaties and agreements between the United States and foreign governments affect the evaluation of offers from

foreign entities and the performance of contracts in foreign countries.

25.802 Procedures.

(a) When placing contracts with contractors located outside the United States, for performance outside the United States, contracting officers must—

(1) Determine the existence and applicability of any international agreements and ensure compliance with these agreements; and

(2) Conduct the necessary advance acquisition planning and coordination between the appropriate U.S. executive agencies and foreign interests as required by these agreements.

(b) The Department of State publishes many international agreements in the “United States Treaties and Other International Agreements” series. Copies of this publication normally are available in overseas legal offices and U.S. diplomatic missions.

(c) Contracting officers must award all contracts with Taiwanese firms or organizations through the American Institute of Taiwan (AIT). AIT is under contract to the Department of State.

Subpart 25.9—Customs and Duties

25.900 Scope of subpart.

This subpart provides policies and procedures for exempting from import duties certain supplies purchased under Government contracts.

25.901 Policy.

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. Agencies must use these exemptions when the anticipated savings to appropriated funds will outweigh the administrative costs associated with processing required documentation.

25.902 Procedures.

For regulations governing importations and duties, see the Customs Regulations issued by the U.S. Customs Service, Department of the Treasury (19 CFR Chapter 1). Except as provided elsewhere in the Customs Regulations (see 19 CFR 10.100), all shipments of imported supplies purchased under Government contracts are subject to the usual Customs entry and examination requirements. Unless the agency obtains an exemption (see 25.903), those shipments are also subject to duty.

25.903 Exempted supplies.

(a) Subchapters VIII and X of Chapter 98 of the Harmonized Tariff Schedule of

the United States (19 U.S.C. 1202) list supplies for which exemptions from duty may be obtained when imported into the customs territory of the United States under a Government contract. For certain of these supplies, the contracting agency must certify to the Commissioner of Customs that they are for the purpose stated in the Harmonized Tariff Schedule (see 19 CFR 10.102-104, 10.114, and 10.121 and 15 CFR part 301 for requirements and formats).

(b) Supplies (excluding equipment) for Government-operated vessels or aircraft may be withdrawn from any customs-bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, free of duty and internal revenue tax as provided in 19 U.S.C. 1309 and 1317. The contracting activity must cite this authority on the appropriate customs form when making purchases (see 19 CFR 10.59-10.65).

Subpart 25.10—Additional Foreign Acquisition Regulations

25.1001 Waiver of right to examination of records.

(a) *Policy.* The clause at 52.215-2, Audit and Records—Negotiation, prescribed at 15.209(b), and paragraph (d) of the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, prescribed at 12.301(b)(4), implement 10 U.S.C. 2313 and 41 U.S.C. 254d. The basic clauses authorize examination of records by the Comptroller General.

(1) Insert the appropriate basic clause, whenever possible, in negotiated contracts with foreign contractors.

(2) The contracting officer may use 52.215-2 with its Alternate III or 52.212-5 with its Alternate I after—

(i) Exhausting all reasonable efforts to include the basic clause;

(ii) Considering factors such as alternate sources of supply, additional cost, and time of delivery; and

(iii) The head of the agency has executed a determination and findings in accordance with paragraph (b) of this section, with the concurrence of the Comptroller General. However, concurrence of the Comptroller General is not required if the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination.

(b) *Determination and findings.* The determination and findings must—

(1) Identify the contract and its purpose, and identify if the contract is with a foreign contractor or with a

foreign government or an agency of a foreign government;

(2) Describe the efforts to include the basic clause;

(3) State the reasons for the contractor's refusal to include the basic clause;

(4) Describe the price and availability of the supplies or services from the United States and other sources; and

(5) Determine that it will best serve the interest of the United States to use the appropriate alternate clause in paragraph (a)(2) of this section.

25.1002 Use of foreign currency.

(a) Unless an international agreement or the Trade Agreements Act (see 25.408(a)(3)) requires a specific currency, contracting officers must determine whether solicitations for contracts to be entered into and performed outside the United States will require submission of offers in U.S. currency or a specified foreign currency. In unusual circumstances, the contracting officer may permit submission of offers in other than a specified currency.

(b) To ensure a fair evaluation of offers, solicitations generally should require all offers to be priced in the same currency. However, if the solicitation permits submission of offers in other than a specified currency, the contracting officer must convert the offered prices to U.S. currency for evaluation purposes. The contracting officer must use the current market exchange rate from a commonly used source in effect as follows:

(1) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.

(2) For acquisitions conducted using negotiation procedures—

(i) On the date specified for receipt of offers, if award is based on initial offers; otherwise

(ii) On the date specified for receipt of final proposal revisions.

(c) If a contract is priced in foreign currency, the agency must ensure that adequate funds are available to cover currency fluctuations to avoid a violation of the Anti-Deficiency Act (31 U.S.C. 1341, 1342, 1511–1519).

Subpart 25.11—Solicitation Provisions and Contract Clauses

25.1101 Acquisition of supplies.

The following provisions and clauses apply to the acquisition of supplies and the acquisition of services involving the furnishing of supplies.

(a)(1) Insert the clause at 52.225–1, Buy American Act—Balance of Payments Program—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 and an exception to the Balance of Payments Program applies.

(2) Insert the provision at 52.225–2, Buy American Act—Balance of Payments Program 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—Balance of Payments Program, in solicitations and contracts with a value exceeding \$25,000 but less than \$186,000, unless—

(A) The acquisition is for the acquisition of supplies, or for services involving the furnishing of supplies, for use outside the United States, and the value of the acquisition is less than the simplified acquisition threshold; or

(B) The acquisition is exempt from the North American Free Trade Agreement and the Israeli Trade Act (see 25.401). 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 less than \$53,150, 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—Balance of Payments Program 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 less than \$53,150, use the provision with its Alternate II.

(c)(1) Insert the clause at 52.225–5, Trade Agreements, in solicitations and contracts valued at \$186,000 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 or Balance of Payments Program are not applicable to

U.S.-made end products, unless the acquisition is to be awarded and performed outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation and does not exceed the increased simplified acquisition threshold of \$200,000. If the agency has not made such a determination, the contracting officer must follow agency procedures.

(2) Insert the provision at 52.225–6, Trade Agreements Certificate, in solicitations containing the clause at 52.225–5.

(d) Insert the provision at 52.225–7, Waiver of Buy American Act for Civil Aircraft and Related Articles, in solicitations for civil aircraft and related articles (see 25.407), if the acquisition value is less than \$186,000.

(e) Insert the clause at 52.225–8, Duty-Free Entry, in solicitations and contracts for supplies that may be imported into the United States and for which duty-free entry may be obtained in accordance with 25.903(a), if the value of the acquisition—

(1) Exceeds \$100,000; or

(2) Is \$100,000 or less, but the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty. When used for acquisitions valued at \$100,000 or less, the contracting officer may modify paragraphs (b)(1) and (i)(2) of the clause to reduce the dollar figure.

25.1102 Acquisition of construction.

(a) Insert the clause at 52.225–9, Buy American Act—Balance of Payments Program—Construction Materials, in solicitations and contracts for construction valued at less than \$6,909,500.

(1) List in paragraph (b)(2) of the clause all foreign construction material excepted from the requirements of the Buy American Act.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(3)(i) of the clause.

(b)(1) Insert the provision at 52.225–10, Notice of Buy American Act/Balance of Payments Program 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 or Balance of Payments Program prior to receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at 52.225–11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, in solicitations and contracts valued at \$6,909,500 or more.

(1) 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 NAFTA country construction material.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(4)(i) of the clause.

(3) For acquisitions valued at \$6,909,500 or more, but less than \$7,143,000, use the clause with its Alternate I.

(d)(1) Insert the provision at 52.225-12, Notice of Buy American Act/Balance of Payments Program 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 or Balance of Payments Program before receipt of offers, use the provision with its Alternate I.

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at 52.225-13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding \$2,500.

(b) *Translations.* Insert the clause at 52.225-14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts if anticipating translation into another language.

(c) *Sanctions.* (1) Except as provided in paragraph (c)(2) of this section, insert the clause at—

(i) 52.225-15, Sanctioned European Union Country End Products, in solicitations and contracts for supplies valued at less than \$186,000; or

(ii) 52.225-16, Sanctioned European Union Country Services, in solicitations and contracts for services—

- (A) Listed in 25.601(a)(3)(i); or
- (B) Valued at less than \$186,000.

(2) Do not insert the clauses in paragraph (c)(1) of this section in—

(i) Solicitations issued and contracts awarded by 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;

(ii) Purchases at or below the simplified acquisition threshold awarded using simplified acquisition procedures;

(iii) Total small business set-asides;

(iv) Contracts in support of U.S. national security interests;

(v) Contracts for essential spare, repair, or replacement parts available

only from sanctioned EU member states; or

(vi) Contracts for which the head of the agency has made a determination in accordance with 25.602(b).

(d) *Foreign currency offers.* Insert the provision at 52.225-17, Evaluation of Foreign Currency Offers, in solicitations that permit the use of other than a specified currency. Insert in the provision the source of the rate to be used in the evaluation of offers.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.102 [Amended]

17. Amend section 36.102 by removing the definition “Construction”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Amend section 52.212-3 by revising the date of the provision and paragraphs (f) and (g) to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Feb 2000)

* * * * *

(f) *Buy American Act—Balance of Payments Program Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Balance of Payments Program—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled “Buy American Act—Balance of Payments Program—Supplies” and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) *Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate.* (Applies only if the clause at FAR 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade

Agreement—Israeli Trade Act—Balance of Payments Program” and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country 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—Balance of Payments Program”:

NAFTA Country or Israeli End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate I (Feb 2000).* 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—Balance of Payments Program”:

Canadian End Products

Line Item No.: _____

(List as necessary)

(3) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate II (Feb 2000).* 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—Balance of Payments Program”:

Canadian or Israeli End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(4) *Trade Agreements Certificate*. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA 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, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products

Line Item No.: _____
Country of Origin: _____

(List as necessary)

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. 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 or the Balance of Payments Program. 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 such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

* * * * *

19. Amend section 52.212-5 by revising the date of the clause; by revising paragraph (a); by revising paragraphs (b)(16) through (b)(21); and by adding Alternate I after "(End of clause)" 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 (Feb 2000)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

- (1) 52.222-3, Convict Labor (E.O. 11755).
- (2) 52.225-13, Restrictions on Certain Foreign Purchases (E.O.'s 12722, 12724, 13059, and 13067).
- (3) 52.233-3, Protest after Award (31 U.S.C. 3553).

(b) * * *

_____(16) 52.225-1, Buy American Act—Balance of Payments Program—Supplies (41 U.S.C. 10a-10d).

_____(17)(i) 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

_____(ii) Alternate I of 52.225-3.

_____(iii) Alternate II of 52.225-3.

_____(18) 52.225-5, Trade Agreements (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

_____(19) 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).

_____(20) 52.225-16, Sanctioned European Union Country Services (E.O. 12849).

_____(21) [Reserved]

* * * * *

Alternate I (Feb 2000). As prescribed in 12.301(b)(4), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to "paragraphs (a), (b), (c), or (d) of this clause" in the redesignated paragraph (d) to read "paragraphs (a), (b), and (c) of this clause".

20. Amend section 52.213-4 by—

- a. Revising the date of the clause;
- b. Redesignating paragraph (a)(1)(ii) as (a)(1)(iii) and adding a new paragraph (a)(1)(ii);
- c. Removing paragraph (a)(2)(i) and redesignating paragraphs (a)(2)(ii) through (a)(2)(viii) as (a)(2)(i) through (a)(2)(vii), respectively; and
- d. Revising paragraph (b)(1)(viii) to read as follows:

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

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Feb 2000)

(a)(1) * * *

(ii) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2000) (E.O.'s 12722, 12724, 13059, and 13067).

* * * * *

(b)(1) * * *

(viii) 52.225-1, Buy American Act—Balance of Payments Program—Supplies (Feb 2000) (41 U.S.C. 10a-10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use within the United States if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see 19.502-2), and does not exceed \$25,000.)

* * * * *

52.214-34 [Amended]

21. Amend the introductory paragraph of section 52.214-34 by removing "and 25.408(d)".

52.214-35 [Amended]

22. Amend the introductory paragraph of section 52.214-35 by removing "and 25.408(d)".

23. Amend section 52.215-1 by revising the date of the provision and paragraph (c)(5) to read as follows:

52.215-1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions to Offerors—Competitive Acquisitions (Feb 2000)

(c) * * *

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

* * * * *

24. Revise sections 52.225-1 through 52.225-15; add section 52.225-16 and 52.225-17; and remove sections 52.225-18 through 52.225-22 to read as follows:

Subpart 52.2—Text of Provisions and Clauses

Sec.

* * * * *

52.225-1 Buy American Act—Balance of Payments Program—Supplies.

52.225-2 Buy American Act—Balance of Payments Program Certificate.

52.225-3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.

52.225-4 Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate.

52.225-5 Trade Agreements.

52.225-6 Trade Agreements Certificate.

52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.

52.225-8 Duty-Free Entry.

52.225-9 Buy American Act—Balance of Payments Program—Construction Materials.

52.225-10 Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials.

52.225-11 Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements.

52.225-12 Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials under Trade Agreements.

52.225-13 Restrictions on Certain Foreign Purchases.

52.225-14 Inconsistency between English Version and Translation of Contract.

52.225-15 Sanctioned European Union Country End Products.

52.225-16 Sanctioned European Union Country Services.

52.225-17 Evaluation of Foreign Currency Offers.

* * * * *

52.225-1 Buy American Act—Balance of Payments Program—Supplies.

As prescribed in 25.1101(a)(1), insert the following clause:

Buy American Act—Balance of Payments Program—Supplies (Feb 2000)

(a) *Definitions*. As used in this clause—

Component means any item supplied to the Government as part of an end item or of another component.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic end product means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

End product means supplies delivered under a line item of a Government contract.

Foreign end product means an end product other than a domestic end product.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(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. The Balance of Payments Program provides a preference for domestic end products for supplies acquired for use outside the United States.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act—Balance of Payments Program Certificate."
(End of clause)

52.225-2 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 25.1101(a)(2), insert the following provision:

Buy American Act—Balance of Payments Program Certificate (Feb 2000)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product as defined in the clause of this solicitation

entitled "Buy American Act—Balance of Payments Program—Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic and products.

(b) Foreign End Products:

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

52.225-3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.

As prescribed in 25.1101(b)(1)(i), insert the following clause:

Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program (Feb 2000)

(a) *Definitions.* As used in this clause—

Component means any item supplied to the Government as part of an end item or of another component.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic end product means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

End product means supplies delivered under a line item of a Government contract.

Foreign end product means an end product other than a domestic end product.

Israeli end product means an article that—

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

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) 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 NAFTA 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.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Components of foreign origin.* Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(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), the Israeli Free Trade Area Implementation Act of 1985 (Israeli Trade Act) (19 U.S.C. 2112 note), and the Balance of Payments Program by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products or Israeli end products.

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA and the Israeli Trade Act 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 domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate." If the Contractor specified in its offer that the Contractor would supply a NAFTA country end product or an Israeli end product, then the Contractor shall supply a NAFTA country end product, an Israeli end product or, at the Contractor's option, a domestic end product.
(End of clause)

Alternate I (Feb 2000). As prescribed in 25.1101(b)(1)(ii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (d) for paragraph (d) of the basic clause:

Canadian end product means an article that—

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

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payment Program Certificate." If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.

Alternate II (Feb 2000). As prescribed in 25.1101(b)(1)(iii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (d) for paragraph (d) of the basic clause:

Canadian end product means an article that—

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

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA and the Israeli Trade Act 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 domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payment Program Certificate." If the Contractor specified in its offer that the Contractor would supply a Canadian end product or an Israeli end product, then the Contractor shall supply a Canadian end product, an Israeli end product or, at the Contractor's option, a domestic end product.

52.225-4 Buy American Act North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate.

As prescribed in 25.1101(b)(2)(i), insert the following provision:

Buy American Act North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate (Feb 2000)

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product (as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program") and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(b) The offeror certifies that the following supplies are NAFTA country 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—Balance of Payments Program":

NAFTA Country or Israeli End Products:

Line Item No. _____
Country of Origin _____
(List as necessary)

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products

Line Item No.: _____
Country of Origin: _____
(List as necessary)

(d) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

Alternate I (Feb 2000). As prescribed in 25.1101(b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) 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—Balance of Payments Program":

Canadian End Products:

Line Item No. _____
(List as necessary)

Alternate II (Feb 2000). As prescribed in 25.1101(b)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) 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—Balance of Payments Program":

Canadian or Israeli End Products

Line Item No.: _____
Country of Origin: _____
(List as necessary)

52.225-5 Trade Agreements.

As prescribed in 25.1101(c)(1), insert the following clause:

Trade Agreements (Feb 2000)

(a) *Definitions.* As used in this clause. *Caribbean Basin country* means any of the following countries: 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, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

Caribbean Basin country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin 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 Caribbean Basin 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. The term excludes products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

(i) Textiles and apparel articles that are subject to textile agreements;

(ii) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(iii) Tuna, prepared or preserved in any manner in airtight containers;

(iv) Petroleum, or any product derived from petroleum; and

(v) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply.

Designated country means any of the following countries:

Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea.

Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan.

Kiribati, Korea, Republic of Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda.

Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Designated country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a designated 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 designated 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.

End product means supplies delivered under a line item of a Government contract.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) 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 NAFTA 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.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States 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.

(b) *Implementation*. This clause implements the Trade, Agreements Act (19 U.S.C. 2501, *et seq.*) and the North American Free Trade Agreement Implementation Act of 1993, (NAFTA) (19 U.S.C. 3301 note), by restricting the acquisition of end products that are not U.S.-made, designated country,

Caribbean Basin country, or NAFTA country end products.

(c) *Delivery of end products*. The Contracting Officer has determined that the Trade Agreements Act and NAFTA 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, designated country, Caribbean Basin country, or NAFTA 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)

52.225-6 Trade Agreements Certificate.

As prescribed in 25.1101(c)(2), insert the following provision:

Trade Agreements Certificate (Feb 2000)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA 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, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products

Line Item No.:

Country of Origin: _____

(List as necessary),

(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 or the Balance of Payments Program. 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 such products or that the offers for such products are insufficient to fulfill the requirements of this solicitation.

(End of provision)

52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.

As prescribed in 25.1101(d), insert the following provision:

Waiver of Buy American Act for Civil Aircraft and Related Articles (Feb 2000)

(a) *Definition*. *Civil aircraft and related articles*, as used in this provision, means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

(b) The U.S. Trade Representative has waived the Buy American Act for acquisitions of civil aircraft and related articles from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Austria, Belgium, Bulgaria, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Macao, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, and the United Kingdom.

(c) For the purpose of this waiver, an article is a product of a country only if—

(1) It is wholly the growth, product, or manufacture of that country; or

(2) In the case of an article that consists in whole or in part of materials from another country, it has been substantially transformed 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.

(d) The waiver is subject to modification or withdrawal by the U.S. Trade Representative. (End of provision)

52.225-8 Duty-Free Entry.

As prescribed in 25.1101(e), insert the following clause:

Duty-Free Entry (Feb 2000)

(a) *Definition*. *Customs territory of the United States* means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the—

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—

(1) Delivery address of the Contractor (or contracting agency, if appropriate);

(2) Government prime contract number;

(3) Identification of carrier;

(4) Notation "UNITED STATES

GOVERNMENT, _____ [agency], _____ Duty-free entry to be claimed pursuant to Item No(s) _____ [from Tariff Schedules] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to—

(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—

(1) Foreign supplies;

(2) Country of origin;

(3) Contract number; and

(4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if—

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

(End of clause)

52.225-9 Buy American Act—Balance of Payments Program—Construction Materials.

As prescribed in 25.1102(a), insert the following clause:

Buy American Act—Balance of Payments Program—Construction Materials (Feb 2000)

(a) *Definitions.* As used in this clause—

Component means any article, material, or supply incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Domestic preference.* (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows: _____ [Contracting Officer to list applicable excepted materials or indicate "none"]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that

(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. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the

construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy

American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or

Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1			
Foreign construction material	
Domestic construction material	
Item 2			
Foreign construction material	
Domestic construction material	

Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued). List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

(End of clause)

52.225-10 Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials.

As prescribed in 25.1102(b)(1), insert the following provision:

Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials (Feb 2000)

(a) *Definitions*. *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—Balance of Payments Program—Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) *Requests for determinations of inapplicability*. An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers*. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act or Balance of Payments

Program, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers*. (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (Feb 2000). As prescribed in 25.1102(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability*. An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9.

52.225-11 Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements.

As prescribed in 25.1102(c)(1), insert the following clause:

Buy American Act—Balance of Payments Program—Construction Materials Under Trade Agreements (Feb 2000)

(a) *Definitions*. As used in this clause—
Component means any article, material, or supply incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an

item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Designated country means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark.

Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan.

Kiribati, Korea, Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda.

Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Designated country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a designated 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 designated country into a new and different construction material distinct from the materials from which it was transformed.

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same

class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) 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 NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

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

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

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: _____

[Contracting Officer to list applicable excepted materials or indicate “none”]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(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. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material	
Domestic construction material	
Item 2:			
Foreign construction material	
Domestic construction material	

¹ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued). List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

(End of clause)

Alternate I (Feb 2000). As prescribed in 25.1102(c)(3), substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the North American Free Trade Agreement (NAFTA) applies to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for NAFTA country construction materials.

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

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

As prescribed in 25.1102(d)(1), insert the following provision:

Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials Under Trade Agreements (Feb 2000)

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

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225–11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program before submitting its offer, or has not received a response to a previous request, the offeror

shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act or Balance of Payments Program, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225–11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country or NAFTA 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, designated country, or NAFTA country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225–11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(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, designated country, or NAFTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or NAFTA country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.
(End of provision)

Alternate I (Feb 2000). As prescribed in 25.1102(d)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225–11.

52.225–13 Restrictions on Certain Foreign Purchases.

As prescribed in 25.1103(a), insert the following clause:

Restrictions on Certain Foreign Purchases (Feb 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, and Sudan.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.
(End of clause)

52.225–14 Inconsistency between English Version and Translation of Contract.

As prescribed in 25.1103(b), insert the following clause:

Inconsistency Between English Version and Translation of Contract (Feb 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.
(End of clause)

52.225–15 Sanctioned European Union Country End Products.

As prescribed in 25.1103(c), insert the following clause:

Sanctioned European Union Country End Products (Feb 2000)

(a) *Definitions.* As used in this clause—*Sanctioned European Union country end product* means an article that—

(1) Is wholly the growth, product, or manufacture of a sanctioned European Union (EU) member state; 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 sanctioned EU member state 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.

Sanctioned European Union member state means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

(b) The Contractor shall not deliver any sanctioned European Union country end products under this contract.
(End of clause)

52.225-16 Sanctioned European Union Country Services.

As prescribed in 25.1103(c), insert the following clause:

Sanctioned European Union Country Services (Feb 2000)

(a) *Definition. Sanctioned European Union member state*, as used in this clause, means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

(b) The Contractor shall not perform services under this contract in a sanctioned European Union member state. This prohibition does not apply to subcontracts.
(End of clause)

52.225-17 Evaluation of Foreign Currency Offers.

As prescribed in 25.1103(d), insert the following provision:

Evaluation of Foreign Currency Offers (Feb 2000)

If the Government receives offers in more than one currency, the Government will evaluate offers by converting the foreign currency to United States currency using [Contracting Officer to insert source of rate] in effect as follows:

(a) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.

(b) For acquisitions conducted using negotiation procedures—

(1) On the date specified for receipt of offers, if award is based on initial offers; otherwise

(2) On the date specified for receipt of proposal revisions.

(End of provision)

[FR Doc. 99-33431 Filed 12-23-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 7, 10, 15, and 19

[FAC 97-15; FAR Case 1997-306 (97-306); Item III]

RIN 9000-A155

Federal Acquisition Regulation; Contract Bundling

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 sections of the Small Business Reauthorization Act of 1997. The sections of the Act define "contract bundling," and require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

DATES: *Effective Date:* December 27, 1999.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after December 27, 1999.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before February 25, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1997-306@gsa.gov.

Please submit comments only and cite FAC 97-15, FAR case 1997-306 (97-306) in all correspondence related to this case.

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. Ralph De Stefano, Procurement Analyst,

at (202) 501-1758. Please cite FAC 97-15, FAR case 1997-306 (97-306).

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR Parts 2, 4, 5, 7, 10, 15, and 19 to implement Sections 411-417 of the Small Business Reauthorization Act of 1997, Pub. L. 105-135, and the Small Business Administration (SBA) interim rule published in the **Federal Register** at 64 FR 57366, October 25, 1999. Sections 411-417 amend Title 15 of the United States Code to define "contract bundling," and require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

This rule was not subject to Office of Management and Budget 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 changes may 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 opportunities for participation by small entities in acquisitions involving bundling may increase. An Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

The objective of the interim rule is to establish agency procedures for processing bundled requirements and to ensure maximum small business participation in bundled acquisitions. Agencies must—

- Perform market research when bundled requirements are anticipated;
- Justify bundling in acquisition strategies;
- Meet specific estimated benefit thresholds before bundling requirements;
- Assess the impact of bundling on small businesses;
- Submit solicitations containing bundled requirements to the SBA procurement center representatives for review; and
- Include, in negotiated competitions for bundled requirements, a source selection factor for the offerors' proposed use of small businesses as subcontractors and their past performance in meeting subcontracting goals.

These objectives are stated in Sections 411-417 of Pub. L. 105-135 and in SBA's implementing regulations.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will 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 97-15, FAR Case 1997-306 (97-306)), 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.*

D. Determination to Issue an Interim Rule

The Councils have made a determination 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 this interim rule implements Sections 411-417 of the Small Business Reauthorization Act of 1997, Pub. L. 105-135. Sections 411-417 amend Title 15 of the United States Code to define "contract bundling," and require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts. The SBA published an interim rule in the **Federal Register** at 64 FR 57372, October 25, 1999, with an effective date of December 27, 1999, to implement Sections 411-417 of Pub. L. 105-135. It is necessary to have a December 27, 1999, effective date for this rule to provide contracting regulations that conform with SBA's regulations.

However, pursuant to Pub. L. 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 2, 4, 5, 7, 10, 15, and 19

Government procurement.
Dated: December 20, 1999.

Edward C. Loeb,
Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 5, 7, 10, 15, and 19 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 5, 7, 10, 15, and 19 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 2—DEFINITIONS OF WORDS AND TERMS

2. In section 2.101, add, in alphabetical order, the definitions "bundled contract" and "bundling" to read as follows:

2.101 Definitions.

* * * * *

Bundled contract means a contract that is entered into to meet requirements that are consolidated by bundling, excluding a contract awarded and performed entirely outside the United States.

Bundling means—

(1) Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to—

- (i) The diversity, size, or specialized nature of the elements of the performance specified;
- (ii) The aggregate dollar value of the anticipated award;
- (iii) The geographical dispersion of the contract performance sites; or
- (iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

(2) *Separate smaller contract*, as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. In section 4.601, redesignate paragraph (e) as paragraph (f); add new paragraph (e); and revise the redesignated paragraph (f) to read as follows:

4.601 Record requirements.

* * * * *

(e) In addition to the information described in paragraphs (b), (c), and (d) of this section, agencies must be able to access information from the computer file to identify bundled contracts with a total contract value, including all options, exceeding \$5,000,000.

(f) Agencies must transmit this information to the Federal Procurement Data System in accordance with its procedures.

PART 5—PUBLICIZING CONTRACT ACTIONS

4. Revise the section heading and text of 5.206 to read as follows:

5.206 Notices of subcontracting opportunities.

(a) The following entities may use a CBD notice to seek competition for subcontracts, to increase participation by small, small disadvantaged, and women-owned small business firms, and to meet established subcontracting plan goals:

(1) A contractor awarded a contract exceeding \$100,000 that is likely to result in the award of any subcontracts.

(2) A subcontractor or supplier, at any tier, under a contract exceeding \$100,000, that has a subcontracting opportunity exceeding \$10,000.

(b) The notices must describe—

- (1) The business opportunity, following the standard CDB format for items 7, 10, 11, and 17 in 5.207(b)(4);
- (2) Any prequalification requirements; and
- (3) Where to obtain technical data needed to respond to the requirement.

PART 7—ACQUISITION PLANNING

5. In section 7.103, add paragraph (r) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(r) Ensuring that acquisition planners, to the maximum extent practicable

(1) Structure contract requirements to facilitate competition by and among small business concerns; and

(2) Avoid unnecessary and unjustified bundling that precludes small business participation as contractors (see 7.107) (15 U.S.C. 631(j)).

6. Revise paragraph (b)(1) of section 7.105 to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action—(1) Sources.* Indicate the prospective sources of supplies or services that can meet the need. Consider required sources of supplies or services (see part 8). Include consideration of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see part 19), and the impact of any bundling that might affect their participation in the acquisition (see 7.107) (15 U.S.C. 644(e)). Address the extent and results of the market research and indicate their impact on the various elements of the plan (see part 10).

* * * * *

7. Add section 7.107 to read as follows:

7.107 Additional requirements for acquisitions involving bundling of contract requirements.

(a) Bundling may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the head of the agency must conduct market research to determine whether bundling is necessary and justified (15 U.S.C. 644(e)(2)). Market research may indicate that bundling is necessary and justified if an agency would derive measurably substantial benefits (see 10.001(a)(2)(iv) and (a)(3)(vi)).

(b) Measurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this section, the agency may determine bundling to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits equivalent to—

(1) Ten percent of the estimated contract value (including options) if the value is \$75 million or less; or

(2) Five percent of the estimated contract value (including options) if the value exceeds \$75 million.

(c) Without power of delegation, the service acquisition executive for the military departments, the Under Secretary of Defense for Acquisition, Technology and Logistics for the defense agencies, or the Deputy Secretary or equivalent for the civilian agencies may determine that bundling is necessary and justified when

(1) The expected benefits do not meet the thresholds in paragraphs (b)(1) and (b)(2) of this section but are critical to the agency's mission success; and

(2) The acquisition strategy provides for maximum practicable participation by small business concerns.

(d) Reduction of administrative or personnel costs alone is not sufficient justification for bundling unless the cost savings are expected to be at least 10 percent of the estimated contract value (including options) of the bundled requirements.

(e) Substantial bundling is any bundling that results in a contract with

an average annual value of \$10 million or more. When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must—

(1) Identify the specific benefits anticipated to be derived from bundling;

(2) Include an assessment of the specific impediments to participation by small business concerns as contractors that result from bundling;

(3) Specify actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;

(4) Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements; and

(5) Include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

(f) The contracting officer must justify bundling in acquisition strategy documentation.

(g) In assessing whether cost savings would be achieved through bundling, the contracting officer must consider the cost that has been charged or, where data is available, could be charged by small business concerns for the same or similar work.

(h) The requirements of this section do not apply to bundled contracts that are awarded in accordance with OMB Circular A-76 if a cost comparison has been performed under OMB Circular A-76 procedures. However, agencies must comply with the requirements of this section if they have not been met under A-76 procedures.

PART 10—MARKET RESEARCH

8. Amend section 10.001 as follows:

a. In paragraph (a) introductory text, remove “shall” and add “must” in its place;

b. In paragraph (a)(1) remove “which” and add “that” in its place;

c. At the end of paragraph (a)(2)(ii) remove “and”;

d. Add paragraph (a)(2)(iv);

e. At the end of paragraph (a)(3)(iv) remove “and”;

f. In paragraph (a)(3)(v) remove the period and add “; and”;

g. Add paragraph (a)(3)(vi); and

h. Add paragraph (c).

The revised and added text reads as follows:

10.001 Policy.

* * * * *

(a) * * *

(2) * * *

(iv) Before soliciting offers for acquisitions that could lead to a

bundled contract (15 U.S.C. 644(e)(2)(A)); and

(3) * * *

(vi) Determine whether bundling is necessary and justified (see 7.107) (15 U.S.C. 644(e)(2)(A)).

* * * * *

(c) If an agency contemplates awarding a bundled contract, the agency should—

(1) When performing market research, consult with the local Small Business Administration procurement center representative (PCR) or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting

Area Office serving the area in which the procuring activity is located; and

(2) At least 30 days before release of the solicitation, notify any affected incumbent small business concerns of—

(i) The Government's intention to bundle the requirement; and

(ii) How the concerns may contact the appropriate Small Business Administration representative.

PART 15—CONTRACTING BY NEGOTIATION

15.101-2 [Amended]

8a. In section 15.101-2, amend paragraph (b)(1) by removing “15.304(c)(3)(iii)” and adding “15.304(c)(3)(iv)” in its place.

9. In section 15.304, amend paragraphs (c)(3)(i) and (c)(3)(ii) by removing “(iii)” and adding “(iv)” in their places; redesignate paragraph (c)(3)(iii) as (c)(3)(iv); and add new paragraphs (c)(3)(iii) and (c)(3)(5) to read as follows:

15.304 Evaluation factors and significant subfactors.

* * * * *

(c) * * *

(3) * * *

(iii) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)).

* * * * *

(5) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor (15 U.S.C. 637(d)(4)(G)(i)).

* * * * *

10. In section 15.305, add paragraph (a)(5) to read as follows:

15.305 Proposal evaluation.

(a) * * *
(5) Small business subcontracting evaluation. Structure solicitations to give offers from small business concerns the highest rating for the evaluation factors in 15.304(c)(3)(iii) and (c)(5).
* * * * *

PART 19—SMALL BUSINESS PROGRAMS

11. In section 19.101, revise paragraph (g)(1) to read as follows:

19.101 Explanation of terms.

(g) Control through contractual relationships—(1) Definition of a joint venture for size determination purposes. A joint venture for size determination purposes is an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(i) For bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture.

(ii) For other than bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture, if—

(A) A revenue-based size standard applies to the requirement and the estimated contract value, including options, exceeds one-half the applicable size standard; or

(B) An employee-based size standard applies to the requirement and the estimated contract value, including options, exceeds \$10 million.

12. In section 19.201, redesignate paragraphs (d)(5) through (d)(9) as (d)(6) through (d)(10) respectively; add a new paragraph (d)(5); and amend paragraph (e) by removing “shall” and adding “must” in its place. The added text reads as follows:

19.201 General policy.

(d) * * *
(5) Work with the SBA procurement center representative to—
(i) Identify proposed solicitations that involve bundling;

(ii) Facilitate small business participation as contractors including small business contract teams, where appropriate; and

(iii) Facilitate small business participation as subcontractors and suppliers where participation by small business concerns as contractors is unlikely;

13. Amend section 19.202–1 as follows:

a. At the end of paragraph (e)(1)(i) remove “, or” and add “;” in its place;

b. In paragraph (e)(1)(ii) remove the period and add “; or” in its place;

c. Add paragraph (e)(1)(iii);

d. In the introductory text of paragraph (e)(2) remove “shall also” and add “also must” in its place;

e. At the end of paragraph (e)(2)(iii) remove “or;”

f. In paragraph (e)(2)(iv) remove the period and add “; or” in its place; and

g. Add paragraph (e)(2)(v).

The added text reads as follows:

19.202–1 Encouraging small business participation in acquisitions.

(e) * * *
(1) * * *
(iii) The proposed acquisition is for a bundled requirement.

(2) * * *
(v) Bundling is necessary and justified.

[FR Doc. 99–33432 Filed 12–23–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 42

[FAC 97–15; FAR Case 99–015; Item IV]

RIN 9000–AI56

Federal Acquisition Regulation; Deobligation Authority

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 establish deobligation of excess funds as one of the contract administration functions normally delegated to the contract administration office.

DATES: Effective Date: February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

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. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–15, FAR case 99–015.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements a recommendation of the Contract Closeout Working Integrated Process Team chartered by the Deputy Secretary of Defense under the Defense Reform Initiative Directive #32.

The rule revises FAR 4.804–5 and 42.302 to establish deobligation of excess funds as one of the contract administration functions normally delegated to the contract administration office. In addition, the rule includes editorial revisions for plain language purposes.

This rule was not subject to Office of Management and Budget 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 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 97–15, FAR case 99–015), 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 4 and 42:

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 42 as set forth below:

1. The authority citation for 48 CFR parts 4 and 42 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 4—ADMINISTRATIVE MATTERS

2. In section 4.804-5, revise the section heading, the introductory text of paragraph (a), and paragraph (a)(15); and amend the introductory text of paragraphs (b) and (c) by removing "shall" and inserting "must" in its place. The revised text reads as follows:

4.804-5 Procedures for closing out contract files.

(a) The contract administration office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the contract administration office must review the contract funds status and notify the contracting office of any excess funds the contract administration office might deobligate. When complete, the administrative closeout procedures must ensure that

* * * * *

(15) Contract funds review is completed and excess funds deobligated.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

3. In section 42.302, revise the introductory text of paragraph (a); and add paragraph (a)(70) to read as follows:

42.302 Contract administration functions.

(a) The contracting officer normally delegates the following contract administration functions to a CAO. The contracting officer may retain any of these functions, except those in paragraphs (a)(5), (a)(9), and (a)(11) of this section, unless the cognizant Federal agency (see 42.001) has designated the contracting officer to perform these functions.

* * * * *

(70) Deobligate excess funds after final price determination.

* * * * *

[FR Doc. 99-33433 Filed 12-23-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 8 and 39**

[FAC 97-15; FAR Case 99-602; Item V]

RIN 9000-AI57

Federal Acquisition Regulation; Transition of the Financial Management System Software 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) agreed to amend the Federal Acquisition Regulation (FAR) to delete the language pertaining to the Financial Management Systems Software Mandatory Multiple Award Schedule Contracts Program because this schedule is no longer mandatory due to changes to OMB Circular A-127.

DATES: Effective Date: February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

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. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-15, FAR case 99-602.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends the FAR to delete Subpart 8.9, Financial Management Systems Software Mandatory Multiple Award Schedule Contracts Program and to add a reference in Part 39 to OMB Circular A-127. The Office of Management and Budget (OMB) revised OMB Circular A-127, that requires Federal agencies to

use a single, integrated financial management system. Agencies now must acquire core financial management software that has been certified by the Joint Financial Management Improvement Program. The Financial Management Systems Software Mandatory Multiple Award Schedules has been eliminated. As of October 1, 1999, agencies may purchase certified financial management software through the Information Technology (FSC Group 70) Federal Supply Schedule using the procedures in FAR Subpart 8.4 or award their own contracts.

This rule was not subject to Office of Management and Budget 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, because the rule merely deletes FAR coverage that is no longer necessary due to revisions to OMB Circular A-127, which eliminate the mandatory status of the Financial Management System Software Multiple Award Schedules Contracts Program. Accordingly, publication for public comments is not required. However, the Councils will 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 97-15, FAR case 99-602), 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 8 and 39

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 39 as set forth below:

1. The authority citation for 48 CFR parts 8 and 39 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 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES**Subpart 8.9 [Removed and Reserved]**

2. Remove and reserve Subpart 8.9.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

3. Revise section 39.000 to read as follows:

39.000 Scope of part.

This part prescribes acquisition policies and procedures for use in acquiring information technology, including financial management systems, consistent with other parts of this regulation, OMB Circular No. A-127, Financial Management Systems and OMB Circular No. A-130, Management of Federal Information Resources.

4. Add paragraph (c) to section 39.101 to read as follows:

39.101 Policy.

* * * * *

(c) Agencies must follow OMB Circular A-127, Financial Management Systems, when acquiring financial management systems. Agencies may acquire only core financial management software certified by the Joint Financial Management Improvement Program.

[FR Doc. 99-33434 Filed 12-23-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 11 and 52**

[FAC 97-15; FAR Case 99-018; Item VI]

RIN 9000-A158

Federal Acquisition Regulation; Document Availability

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 update how the public may obtain Department of Defense specifications and standards.

DATES: *Effective Date:* December 27, 1999.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after December 27, 1999.

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. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-15, FAR case 99-018.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR 11.201(d) and the provision at 52.211-2 to update how the public may obtain Department of Defense specifications and standards via the Internet from the ASSIST database or by phone, fax, or mail from the Department of Defense Single Stock Point.

This rule was not subject to Office of Management and Budget 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 subpart 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 97-15, FAR case 99-018), 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 11 and 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 11 and 52 as set forth below:

1. The authority citation for 48 CFR parts 11 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 11—DESCRIBING AGENCY NEEDS

2. Amend section 11.201 by revising paragraph (d)(2) to read as follows:

11.201 Identification and availability of specifications.

* * * * *

(d)(1) * * *

(2) The DoDISS may be obtained from the-

(i) ASSIST database via the Internet at <http://assist.daps.mil>; or

(ii) Department of Defense Single Stock Point (DoDSSP), Building 4, Section D 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 52.211-2 to read as follows:

52.211-2 Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and descriptions listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L.

As prescribed in 11.204(b), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12-L (DEC 1999)

Copies of specifications, standards, and data item descriptions cited in this solicitation may be obtained—

(a) From the ASSIST database via the Internet at <http://assist.daps.mil>; or

(b) By submitting a request to the—
Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(End of provision)

[FR Doc. 99-33435 Filed 12-23-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 12, 19, and 52**

[FAC 97-15; FAR Case 98-011; Item VII]

RIN 9000-AI33

**Federal Acquisition Regulation; SBA's
8(a) Business Development 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 implement revisions made to Small Business Administration (SBA) regulations pertaining to its 8(a) Business Development (8(a)BD) Program.

DATES: *Effective Date:* December 27, 1999.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after December 21, 1999.

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. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-15, FAR case 98-011.

SUPPLEMENTARY INFORMATION:**A. Background**

The Councils published an interim rule in the **Federal Register** on June 17, 1999 (64 FR 32742). The rule amended FAR Parts 12, 19, and 52 to conform to recent amendments made by the Small Business Administration (SBA) to their regulations pertaining to the 8(a)BD Program. The SBA published a final rule in the **Federal Register** on June 30, 1998 (63 FR 35726). The SBA rule amended the eligibility procedures for admission to the 8(a)BD and contractual assistance programs. These changes involve administrative matters concerning requirement offerings, contract execution, contract administration, and SBA appeals.

There were no public comments submitted in response to the interim

rule. Therefore, the Councils have agreed to convert the interim rule to a final rule without change.

This rule was not subject to Office of Management and Budget 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 merely addresses changes made by the Small Business Administration (SBA) to 13 CFR parts 121, 124, and 134. The SBA has certified that the changes set forth in its rule will not have a significant economic impact on a substantial number of small entities because the changes do not increase the net number of current 8(a) certified small businesses or the net number of current 8(a) participants by more than 500 to 800 businesses, or less than 1 percent of the total universe of small firms seeking Government contracts.

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 12, 19, and 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 12, 19, and 52, which was published in the **Federal Register** on June 17, 1999 (64 FR 32742), as a final rule without change.

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

[FR Doc. 99-33436 Filed 12-23-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 13**

[FAC 97-15; FAR Case 99-304; Item VIII]

RIN 9000-AI59

**Federal Acquisition Regulation;
Special Simplified Procedures for
Purchases of Commercial Items in
Excess of the Simplified Acquisition
Threshold**

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 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 806 extends the test of the special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000, until January 1, 2002.

DATES: *Effective Date:* December 27, 1999.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after December 27, 1999.

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. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-15, FAR case 99-304.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR Subpart 13.5 to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 806 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2002, the expiration of the test of special simplified procedures for purchases of commercial items greater than the

simplified acquisition threshold, but not exceeding \$5,000,000. This rule also makes plain language editorial revisions.

This rule was not subject to Office of Management and Budget 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 subpart 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 97-15, FAR case 99-304), 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 13

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

1. The authority citation for 48 CFR part 13 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 13.500 in paragraph (b) by removing “shall” and adding “must” in its place; and by revising paragraph (d) to read as follows:

13.500 General.

* * * * *

(d) The authority to issue solicitations under this subpart expires on January 1, 2002. Contracting officers may award contracts after the expiration of this authority for solicitations issued before the expiration of the authority.

3. Amend section 13.501 in the introductory text of paragraphs (a)(1) and (b) by removing “shall” and adding “must” in their place; and by revising paragraph (a)(2)(ii) to read as follows:

13.501 Special documentation requirements.

(a) * * *

(2) * * *

(ii) For a proposed contract exceeding \$500,000, the competition advocate for the procuring activity, designated pursuant to 6.501, or an official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

* * * * *

[FR Doc. 99-33437 Filed 12-23-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16, 48, and 52

[FAC 97-15; FAR Case 98-017; Item IX]

RIN 9000-AI35

Federal Acquisition Regulation; Review of Award Fee Determinations (Burnside-Ott)

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). The amendment implements rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

DATES: Effective Date: February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

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. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-15, FAR case 98-017.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 24472, May 6, 1999, and received no comments. This final rule amends the FAR to implement the rulings of the United States Court of Appeals in *Burnside-Ott Aviation Training Center v. Dalton, Secretary of the Navy*, 107 F.3d 854 (Fed. Cir. 1997) and of the United States Court of Federal Claims in *Rig Masters, Inc. v. The United States*, 42 (Fed. Cl. 369 (1998)). The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies. The rule amends FAR 16.405-2(a) by deleting the statement that award-fee determinations are not subject to the disputes clause of the contract and inserting a statement that such determinations and the methodology for determining award fee are unilateral decisions made solely at the discretion of the Government. In addition, the rule amends—

(a) FAR 16.406 to conform with the newly revised 16.405-2(a);

(b) FAR Part 48 to—

(1) Remove references to the Contract Disputes Act;

(2) State that certain unilateral decisions are made solely at the discretion of the Government; and

(3) Insert a statement that the contracting officer's determination of the duration of the sharing period and the contractor's sharing rate is one such decision;

(c) The clauses at 52.248-1 and 52.248-3 to conform with the newly revised Part 48; and

(d) The clauses at 52.219-10, 52.219-26, and 52.226-1 to remove exemptions to the Contract Disputes Act. Also, we made editorial revisions to all affected sections for plain language purposes.

This rule was not subject to Office of Management and Budget 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 implements court rulings relating to a statute that has been in effect since 1979. This final rule retains the government's unilateral decision

authority in these matters. Therefore, we have not performed a Regulatory Flexibility Analysis. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** at 64 FR 24472, May 6, 1999.

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 16, 48, and 52

Government procurement.
Dated: December 20, 1999.

Edward C. Loeb,
Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 16, 48, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 16, 48, 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 16—TYPES OF CONTRACTS

2. Amend section 16.405–2 by revising the last sentence of paragraph (a) to read as follows:

16.405–2 Cost-plus-award-fee contracts.

(a) * * * This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.
* * * * *

3. Amend section 16.406 in paragraphs (a), (b), and the introductory text of paragraph (e) by removing “The contracting officer shall insert” and adding “Insert” in their place; and by revising paragraph (e)(3) to read as follows:

16.406 Contract clauses.

* * * * *

(e) * * *

(3) Expressly provides that the award amount and the award-fee determination methodology are unilateral decisions made solely at the discretion of the Government.

PART 48—VALUE ENGINEERING

4. Amend section 48.103 by revising the introductory text of paragraph (c); and by adding a new paragraph (c)(4) to read as follows:

48.103 Processing value engineering change proposals.

* * * * *

(c) The following Government decisions are unilateral decisions made solely at the discretion of the Government:

* * * * *

(4) The contracting officer’s determination of the duration of the sharing period and the contractor’s sharing rate.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.219–10 by revising the date of the clause; in the first sentence of paragraph (b) by adding “*Contracting Officer to*” following the opening bracket; and by revising the last sentence of paragraph (b) to read as follows:

52.219–10 Incentive Subcontracting Program.

* * * * *

INCENTIVE SUBCONTRACTING PROGRAM (FEB 2000)

* * * * *

(b) * * * Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

* * * * *

6. Amend section 52.219–26 by revising the date of the clause and the last sentence of paragraph (b) to read as follows:

52.219–26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

* * * * *

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—INCENTIVE SUBCONTRACTING (FEB 2000)

* * * * *

(b) * * * Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

* * * * *

7. Amend section 52.226–1 by revising the date of the clause and paragraph (d) to read as follows:

52.226–1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

* * * * *

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (FEB 2000)

* * * * *

(d) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

8. Amend section 52.248–1—
a. By revising the date of the clause;
b. In paragraphs (e)(1) and (e)(2), by removing “shall” each time it is used (3 times and 1 time, respectively) and adding “will” in its place;
c. By revising the last sentence of paragraph (e)(3);
d. By revising paragraph (j); and
e. In Alternate II, by revising the date and adding a sentence to the end of paragraph (a) to read as follows:

52.248–1 Value Engineering.

* * * * *

VALUE ENGINEERING (FEB 2000)

* * * * *

(e) * * *

(3) * * * The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

* * * * *

(j) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor’s share of collateral savings will not exceed the contract’s firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

* * * * *

Alternate II (Feb 2000). * * *

(a) * * * The decision on which rate applies is a unilateral decision made solely at the discretion of the Government.

* * * * *

9. Amend section 52.248–3 by revising the date of the clause; in paragraphs (e)(1) and (e)(2) by removing “shall” each time it is used (3 times and 1 time, respectively) and adding “will” in its place; and by revising the last sentence of paragraph (e)(3) and paragraph (g) to read as follows:

52.248–3 Value Engineering—Construction.

* * * * *

VALUE ENGINEERING—CONSTRUCTION (FEB 2000)

* * * * *

(e) * * *

(3) * * * The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

* * * * *

(g) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20

percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

* * * * *

[FR Doc. 99-33438 Filed 12-23-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 52

[FAC 97-15; FAR Case 99-600; Item X]

RIN 9000-AI38

Federal Acquisition Regulation; Nondisplacement of Qualified Workers—Commercial Items

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 add the clause, Nondisplacement of Qualified Workers, to the list of clauses the contracting officer may, when applicable, incorporate by reference in the clause concerning contractor terms and conditions required to implement statutes or executive orders—commercial items.

DATES: *Effective Date:* February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

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. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-15, FAR case 99-600.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton and published in the **Federal Register** on October 24, 1994. To obtain public comment and assist in development of implementing regulations, the Department of Labor (DoL) invited comments through a notice of proposed rulemaking in the **Federal Register** at 60 FR 36756, July 18, 1995. The final DoL rule was published in the **Federal Register** at 62 FR 28175, May 22, 1997. DoD, GSA, and NASA published an interim FAR rule implementing DoL's rule under FAR case 94-610 (FAC 97-01, 62 FR 44802, August 22, 1997).

During consideration of the public comments submitted in response to the interim rule, the Councils identified this additional issue and proposed change. The Councils considered this additional change significant enough to warrant additional public comments. The Councils received no public comments in response to the proposed rule published in the **Federal Register** at 64 FR 32738, June 17, 1999. This final rule amends the FAR clause at 52.212-5(c) to add the clause 52.222-50, Nondisplacement of Qualified Workers, to the list of clauses that the contracting officer may incorporate by reference when applicable.

This rule was not subject to Office of Management and Budget 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 identifies the FAR clause at 52.222-50, Nondisplacement of Qualified Workers, as appropriate for incorporation by reference in certain service contracts when determined so by the contracting officer.

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 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 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).

2. Amend section 52.212-5 by revising the date of the clause; by removing from the parenthetical following the introductory text of paragraphs (b) and (c) the parentheses and adding brackets in their place; and by adding paragraph (c)(6) 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 (FEB 2000)

* * * * *

(c) * * *

____ (6) 52.222-50, Nondisplacement of
Qualified Workers (Executive Order 12933).

* * * * *

[FR Doc. 99-33439 Filed 12-23-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 14, 15, 19, 32, 33, 36, 42, and 52

[FAC 97-15; Item XI]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Technical amendments.

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

EFFECTIVE DATE: December 27, 1999.

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

Building, Washington, DC 20405, (202) 501-4755.

List of Subjects in 48 CFR Parts 2, 5, 14, 15, 19, 32, 33, 36, 42, and 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 2, 5, 14, 15, 19, 32, 33, 36, 42, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 2, 5, 14, 15, 19, 32, 33, 36, 42, 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 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. Amend the definition "simplified acquisition threshold" in section 2.101 by removing "10 U.S.C. 2302(7)" and adding "10 U.S.C. 2302(8)" in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Revise paragraph (f)(3) of section 5.205 to read as follows:

5.205 Special situations.

* * * * *

(f) * * *

(3) Advising that eligibility to participate may be restricted to firms in either the developmental stage or the developmental and transitional stages; and

* * * * *

PART 14—SEALED BIDDING

4. Revise paragraph (r) of section 14.201-6 to read as follows:

14.201-6 Solicitation provisions.

* * * * *

(r) Insert the provision at 52.214-23, Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

15.208 [Amended]

5. Amend the first sentence of paragraph (a) in section 15.208 by removing "or withdrawals," and the first sentence of paragraph (b)(1) by

removing "revision, or withdrawal" and inserting "or revision," in its place.

PART 19—SMALL BUSINESS PROGRAMS

6. Amend section 19.702 by revising the last sentence in paragraph (d) to read as follows:

19.702 Statutory requirements.

* * * * *

(d) * * * However, the mentor-protége agreement must have been approved by the—

Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), 1777 N. Kent Street, Suite 9100, Arlington, VA 22209

before developmental assistance costs may be credited against subcontracting goals. A list of approved agreements may be obtained at http://www.acq.osd.mil/sadbu/mentor_protége/ or by calling 1-800-553-1858.

PART 32—CONTRACT FINANCING

32.503-6 [Amended]

7. Amend paragraph (e)(3) of section 32.503-6 by removing "52.232-6" and adding "52.232-16" in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.213 [Amended]

8. Amend paragraph (a) of section 33.213 by removing "paragraph (h)" and adding "paragraph (i)" in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.104 [Amended]

9. Amend section 36.104 by removing "(41 U.S.C. 541, *et seq.*)" and adding "(40 U.S.C. 541, *et seq.*)" in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.203 [Amended]

10. Amend section 42.203 by removing "DCMCC-F" and adding "DCMC-BD" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.215-1 [Amended]

11. Amend section 52.215-1 by revising the date of the provision to read "(DEC 1999)"; in the first sentence of paragraph (c)(3)(i) of the provision by removing " , revisions, or withdrawals," and adding "or revisions," in its place;

and in the first sentence of paragraph (c)(3)(ii)(A) of the provision by removing "revision, or withdrawal" and adding "or revision," in its place.

52.228-14 [Amended]

12. Amend section 52.228-14 by revising the date of the clause to read "(DEC 1999)"; and in paragraphs (f) and (g) of the clause by removing "____, 19__" and inserting "(Date)____" in their place.

[FR Doc. 99-33440 Filed 12-23-99; 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 (Public Law 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97-15 which amend the FAR. The rules marked with an asterisk (*) indicate 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 97-15 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 97-15

Item	Subject	FAR case	Analyst
I	Pollution Control and Clean Air and Water	97-033	Linfield
II	Foreign Acquisition (Part 25 Rewrite)	97-024	Linfield
III	* Contract Bundling (Interim)	1997-306 (97-306)	De Stefano
IV	Deobligation Authority	99-015	Klein
V	Transition of the Financial Management System Software Program	99-602	Nelson
VI	Document Availability	99-018	Moss
VII	SBA's 8(a) Business Development Program	98-011	Moss
VIII	Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold.	99-304	Moss
IX	Review of Award Fee Determinations (Burnside-Ott)	98-017	De Stefano
X	Nondisplacement of Qualified Workers—Commercial Items	99-600	O'Neill

Item I—Pollution Control and Clean Air and Water (FAR Case 97-033)

This final rule amends the FAR to remove Subpart 23.1, Pollution Control and Clear Air and Water; the provision at 52.223-1, Clean Air and Water Certification; and the clause at 52.223-2, Clean Air and Water. This amendment eliminates the burden on offerors to certify that they do not propose to use a facility for performance of the contract that is on the Environmental Protection Agency's (EPA) "List of Violating Facilities." Contracting officers will use the "GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs" (GSA List) to ensure that they do not award contracts to ineligible offerors. Excluded parties whose ineligibility is limited by reason of a Clean Air Act (CAA) or Clean Water Act (CWA) conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation, in the GSA List. Internet access to the GSA List is available at <http://www.epls.arnet.gov>. These FAR changes do not change long-standing policy that a contracting officer cannot award a contract if performance of the contract would be at a facility convicted of a CAA or CWA violation unless the EPA has certified that the facility has corrected the cause giving rise to the conviction.

Item II—Foreign Acquisition (Part 25 Rewrite) (FAR Case 97-024)

This final rule amends FAR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 25, 36, and 52 to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language.

Item III—Contract Bundling (FAR Case 1997-306) (97-306)

This interim rule amends the FAR to implement Sections 411-417 of the Small Business Reauthorization Act of 1997. Sections 411-417 amend Title 15 of the U.S.C. to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

Item IV—Deobligation Authority (FAR Case 99-015)

This final rule revises FAR 4.804-5 and 42.302 to establish deobligation of excess funds as one of the contract administration functions normally delegated to the contract administration office. In addition, the rule includes editorial revisions for plain language purposes.

Item V—Transition of the Financial Management System Software Program (FAR Case 99-602)

This final rule amends the FAR to delete Subpart 8.9, Financial Management Systems Software Mandatory Multiple Award Schedules Contracts Program.

Item VI—Document Availability (FAR Case 99-018)

This final rule amends the Federal Acquisition Regulation (FAR) at 11.201(d) and 52.211-2 to update how the public may obtain Department of Defense specifications and standards.

Item VII—SBA's 8(a) Business Development Program (FAR Case 98-011)

The interim rule published as Item III of FAC 97-12 is converted to a final rule

without changes. The rule implements changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation, contained in 13 CFR Parts 121, 124, and 134, regarding the eligibility procedures for admission to the 8(a)BD and contractual assistance programs.

VIII—Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 99-304)

This final rule amends FAR Subpart 13.5 to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 806 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2002, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

Item IX—Review of Award Fee Determinations (Burnside-Ott) (FAR Case 98-017)

This final rule amends the Federal Acquisition Regulation (FAR) to implement rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

Item X—Nondisplacement of Qualified Workers—Commercial Items (FAR Case 99-600)

This final rule amends FAR 52.212-5(c) to add the clause entitled 52.222-

50, Nondisplacement of Qualified Workers, to the list of clauses that the contracting officer may incorporate by reference when applicable.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99-33441 Filed 12-23-99; 8:45 am]

BILLING CODE 6820-EP-P