

Federal Register at 68 FR 69227, December 11, 2003. The effective date is delayed from January 12, 2004, to June 8, 2004, and there is no longer any reference to the applicability date. Industry users have requested that the effective date be changed to allow them more time to prepare before the SF 330 is effective. This amendment changes the effective date and eliminates the applicability date.

DATES: Effective Date: Effective January 7, 2004, the effective date of FAR Case 2000-608, New Consolidated Form for Selection of Architect-Engineer Contractors, published in the **Federal Register** at 68 FR 69227, December 11, 2003, is delayed until June 8, 2004.

Applicability Date: The applicability date specified in the final rule published in the **Federal Register** at 68 FR 69227, December 11, 2003, is removed from this final rule.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-19, FAR Case 2000-608A.

SUPPLEMENTARY INFORMATION:

A. Background

An interagency ad hoc committee developed the SF 330.

It was based on the results of a joint Federal-industry survey of the existing Standard Forms (SFs) 254, Architect-Engineer and Related Services Questionnaire, and 255, Architect-Engineer and Related Services Questionnaire for Specific Project, conducted by the Standing Committee on Procurement and Contracting of the Federal Facilities Council (FCC) in 1995 and published in 1996 as FCC Report Number 130, entitled "Survey on the Use of Standard Forms 254 and 255 for Architect-Engineer Qualifications." The survey's purpose was to evaluate the current use of the forms which are used for the submission of qualifications by architect-engineer (A-E) firms interested in Federal contracts, and to identify possible improvements which would enable the existing forms to better serve the needs of Federal agencies and the A-E industry. The SFs 254 and 255 have changed little since their introduction in 1975, although the variety of A-E services has greatly expanded and new technologies have dramatically changed the way A-E firms do business. The report states that Federal agencies and A-E industry overwhelmingly support a structured

format for submitting A-E qualifications, because the structured format saves time and effort and allows efficient and consistent evaluations. It also recommends many specific changes to the existing forms to enhance their effectiveness and simplify their use. Both Federal and A-E industry practitioners believe that the forms need streamlining as well as updating to facilitate electronic usage. The objectives of the SF 330 are to merge the SFs 254 and 255 into a single streamlined form, expand essential information about qualifications and experience, reflect current architect-engineer disciplines, experience types and technology, eliminate information of marginal value, permit limitations on submission length, and facilitate electronic usage. A proposed FAR rule for a new Architect-Engineer Qualifications form was published in the **Federal Register** at 66 FR 53314, October 19, 2001. The final rule replaces SFs 254 and 255 with SF 330, and makes related FAR revisions in 1.106, 36.603, 36.702, 53.236-2, 53.301-254, 53.301-255, and 53.301-330. Use of the SF 330 becomes effective June 8, 2004. Agencies are to continue to use SFs 254 and 255 until the SF 330 is effective.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act analysis was completed and addressed in the final rule published in the **Federal Register** at 68 FR 69227, December 11, 2003.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies; however, this information was provided in the final rule published in the **Federal Register** at 68 FR 69227, December 11, 2003.

List of Subjects in 48 CFR Parts 1, 36, and 53

Government procurement.

Dated: December 30, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 04-177 Filed 1-6-04; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 12, 13, 14, 17, 19, 22, 25, and 52

[FAC 2001-19; FAR Case 2003-016; Item II]

RIN 9000-AJ87

Federal Acquisition Regulation; Free Trade Agreements—Chile and Singapore, and Trade Agreements Thresholds

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 new Free Trade Agreements with Chile and Singapore, as approved by Congress. These Free Trade Agreements are scheduled to go into effect January 1, 2004. The interim rule also implements new dollar thresholds for application of trade agreements, as published by the U.S. Trade Representative in the **Federal Register** at 68 FR 70861, December 19, 2003.

DATES: Effective Date: January 1, 2004.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before March 8, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2003-016@gsa.gov. Please submit comments only and cite FAC 2001-19, FAR case 2003-016, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-19, FAR case 2003-016.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to implement new Free Trade Agreements with Chile and Singapore, as approved by Congress (Pub. L. 108-77 and 108-78). The Free Trade Agreements with Chile and Singapore waive the applicability of the Buy American Act for some foreign supplies and construction materials from Chile and Singapore, and specify procurement procedures designed to ensure fairness, applicable to the acquisition of supplies and services (*see* the Government Procurement provisions at Chapters 9 and 13, respectively, of the trade agreements).

FAR 25.400(a)(3) has been revised to create the new concept of "Free Trade Agreements," which includes the Chile Free Trade Agreement and the Singapore Free Trade Agreement, as well as the North American Free Trade Agreement (NAFTA). This list can be expanded as new Free Trade Agreements are negotiated. Likewise, definitions of "Free Trade Agreement country" and "Free Trade Agreement country end product" have replaced the definitions of "NAFTA country" and "NAFTA country end product" (25.003).

The interim rule modifies the term "eligible product" to include services, consistent with our trade agreements. Although services are not subject to the Buy American Act, the trade agreements require certain procedures in the acquisition of services, unless the service is excluded by the trade agreement (*see* FAR 25.401(b)). The interim rule directs the contracting officer to determine the origin of services by the country in which the firm providing the services is established (FAR 25.402(a)). This is an expansion of the concept formerly at FAR 25.405(c), which addressed only NAFTA country services. The purchase restriction under the Trade Agreements Act also applies to services (25.403(c)).

Section 106 of Public Law 108-77 and Section 106 of Public Law 108-78 provide for arbitration of certain claims. The United States is authorized to resolve any claim against the United States covered by the section of the applicable Free Trade Agreement relating to Investor-State Disputes Settlement, pursuant to the investor-state dispute settlement procedures set forth in the applicable section (section B of chapter 10 for Chile; section C of chapter 15 for Singapore). The Councils invite comment on appropriate implementation of this authorization. Sections 106 of the same public laws also require that after the new trade

agreements become effective, contracts must specify the law that will apply to resolve any breach of contract claim. The statement that "United States law will apply to resolve any claim of breach of contract" has been included in each of the trade agreements clauses (FAR 52.225-3, 52.225-5, and 52.225-11), rather than creating a separate clause.

The threshold for applicability of the new Free Trade Agreements with Chile and Singapore is \$58,550 for supplies and services, and \$6,725,000 for construction contracts. Singapore was already a signatory to the Agreement on Government Procurement, and therefore already included as a designated country under the Trade Agreements Act (FAR 25.003), with thresholds of \$175,000 for supplies or services and \$6,725,000 for construction. This interim rule also amends FAR 22.1503, 25.202, 25.601, 25.1103, and 52.222-19, to implement the new dollar threshold for applications of the Trade Agreements Act and NAFTA. Because of the increasing number of trade agreements and thresholds, the interim rule provides a table of the various thresholds at 25.402(b).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the products of Chile and lowers the trade agreements threshold for the products of Singapore, the Councils do not think there will be any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions under \$100,000 that are set aside for small businesses are exempt. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 5, 12, 13, 14, 17, 19, 22, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-19, FAR case 2003-016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the interim rule affects the certification and information collection requirements in the provisions at FAR 52.212-3, 52.225-4, 52.225-6, and 52.225-11 currently approved under OMB clearances 9000-0130, 9000-0025, and 9000-0141, respectively. The impact, however, is negligible. In the certification provision FAR 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, and the commercial item equivalent at FAR 52.212-3(g)(1), the offeror must now list offers of end products from Chile or Singapore as FTA country end products, rather than as "other foreign end products." In the certification provision at 52.225-6, Trade Agreements Certificate, and the commercial equivalent at 52.212-3(4), Singapore was already a designated country under the Trade Agreements Act, but offerors no longer need to list products of Chile as "other end products." However, offerors of the Chilean end products would have been unlikely to submit offers, because purchase of foreign products other than eligible products is prohibited by the Trade Agreements Act. In the clause at 52.225-11, Buy American Act—Construction Materials under Trade Agreements, an offeror planning to use Chilean construction material would no longer need to request a determination of inapplicability of the Buy American Act, thus also removing the need to submit the supporting data specified in paragraph (d) of the clause.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than March 8, 2004, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection

techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-0130, 9000-0025, and 9000-0141 in all correspondence.

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Free Trade Agreements with Chile and Singapore, as approved by Congress (Pub. L. 108-77 and 108-78), are scheduled to go into effect January 1, 2004. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 5, 12, 13, 14, 17, 19, 22, 25, and 52

Government procurement.

Dated: December 30, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 12, 13, 14, 17, 19, 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 12, 13, 14, 17, 19, 22, 25, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

5.203 [Amended]

■ 2. Amend section 5.203 in the first sentence of paragraph (h) by removing the words “NAFTA or”; and adding “or a Free Trade Agreement” after the word “Act”.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.205 [Amended]

■ 3. Amend section 12.205 in paragraph (c) by removing the words “NAFTA or”; and adding “or a Free Trade Agreement” after the word “Act”.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.302-5 [Amended]

■ 4. Amend section 13.302-5 in paragraph (d)(3)(i) by removing the words “North American Free Trade Agreement” and adding “Free Trade Agreements” in its place.

PART 14—SEALED BIDDING

■ 5. Amend section 14.409-1 by revising paragraph (a)(2) introductory text to read as follows:

14.409-1 Award of unclassified contracts.

(a)(1) * * *
(2) For acquisitions subject to the Trade Agreements Act or a Free Trade Agreement (see 25.408(a)(5)), agencies must include in notices given unsuccessful bidders from designated or Free Trade Agreement countries—

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

17.203 [Amended]

■ 6. Amend section 17.203 in paragraph (h) by removing the words “North American”.

PART 19—SMALL BUSINESS PROGRAMS

19.1103 [Amended]

■ 7. Amend section 19.1103 in paragraph (a)(2) by removing “25.403” and adding “Subpart 25.4” in its place.

19.1307 [Amended]

■ 8. Amend section 19.1307 in paragraph (b)(3) by removing “25.403” and adding “Subpart 25.4” in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 9. Amend section 22.1503 by—
■ a. Removing “25.405” from paragraph (b)(1) and adding “Subpart 25.4” in its place;
■ b. Removing “\$56,190 or more (see 25.405)” from paragraph (b)(3) and adding “\$58,550 or more (see Subpart 25.4)” in its place; and
■ c. Removing “\$169,000” from paragraph (b)(4) and adding “\$175,000” in its place.

PART 25—FOREIGN ACQUISITION

■ 10. Amend section 25.003 by—
■ a. Revising the definition “Eligible product”;
■ b. Removing the definitions “Mexican end product”, “North American Free

Trade Agreement country”, and “North American Free Trade Agreement country end product”; and

■ c. Adding, in alphabetical order, the definitions “Free Trade Agreement country” and “Free Trade Agreement country end product” to read as follows:

25.003 Definitions.

* * * * *

Eligible product means a foreign end product or service that, due to applicability of a trade agreement to a particular acquisition, is not subject to discriminatory treatment.

* * * * *

Free Trade Agreement country means Canada, Chile, Mexico, or Singapore.

Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) 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 an FTA 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.

* * * * *

■ 11. Amend section 25.202 by revising paragraph (c) to read as follows:

25.202 Exceptions.

* * * * *

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of \$6,725,000 or more, see Subpart 25.4.

25.204 [Amended]

■ 12. Amend section 25.204 in paragraph (a) by removing “NAFTA” and adding “Free Trade Agreement” in its place.

■ 13. Amend section 25.400 by revising paragraph (a)(3) to read as follows:

25.400 Scope of subpart.

(a) * * *
(3) Free Trade Agreements (FTAs), consisting of—
(i) 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*));
(ii) Chile FTA (the United States-Chile Free Trade Agreement, as approved by Congress in the United States-Chile Free

Trade Agreement Implementation Act (Pub. L. 108-77)); and

(iii) Singapore FTA (the United States-Singapore Free Trade Agreement, as approved by Congress in the United States-Singapore Free Trade Agreement Implementation Act (Pub. L. 108-78));

* * * * *

■ 14. Revise section 25.401 to read as follows:

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; and

(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).

(b) Acquisitions of the following services are excluded from coverage of the trade agreements indicated in parentheses. Federal Service Codes from the Federal Procurement Data System Product/Service Code Manual may also be indicated in parentheses for some services:

(1) Automatic data processing (ADP) telecommunications and transmission services (D304), except enhanced (*i.e.*, value-added) telecommunications services (Trade Agreements Act (TAA), all FTAs).

(2) 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) (Chile FTA, NAFTA).

(3) Basic telecommunications network services, *i.e.*, voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services. This exclusion does not include information services, as defined in 47 U.S.C. 153(20) (Singapore FTA).

(4) Dredging (TAA, all FTAs).

(5) Operation and management contracts of certain Government or privately owned facilities used for Government purposes, including Federally Funded Research and Development Centers (TAA, Singapore FTA).

(6) Operation of all Department of Defense, Department of Energy, or the National Aeronautics and Space Administration facilities; and all Government-owned research and development facilities or Government-owned environmental laboratories (Chile FTA and NAFTA).

(7) Maintenance, repair, modification, rebuilding and installation of equipment related to ships (Chile FTA and NAFTA).

(8) Nonnuclear ship repair (Chile FTA and NAFTA).

(9) Research and development (TAA, all FTAs).

(10) Transportation services (including launching services, but not including travel agent services) (TAA, all FTAs).

(11) Utility services (TAA, all FTAs).

■ 15. Revise section 25.402 to read as follows:

25.402 General.

(a) The trade agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials from certain countries. The Trade Agreements Act and FTAs specify procurement procedures designed to ensure fairness. When the restrictions of the Buy American Act are waived for eligible products, offers of those products (eligible offers) receive equal consideration with domestic offers. Under the Trade Agreements Act, only U.S.-made end products or U.S. services or eligible products, including services, may be acquired (also see 25.403(c)). The contracting officer shall determine the origin of services by the country in which the firm providing the services is established. See Subpart 25.5 for evaluation procedures for supply contracts subject to trade agreements.

(b) The value of the acquisition is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years. The various thresholds are summarized as follows:

| Trade agreement | Supply contract (equal to or exceeding) | Service contract (equal to or exceeding) | Construction contract (equal to or exceeding) |
|-------------------------|---|--|---|
| TAA/CBTI* | \$175,000 | \$175,000 | \$6,725,000 |
| FTAs | | | |
| NAFTA—Canada | 25,000 | 25,000 | 7,611,532 |
| —Mexico | 58,550 | 58,550 | 7,611,532 |
| Chile FTA | 58,550 | 58,550 | 6,725,000 |
| Singapore FTA | 58,550 | 58,550 | 6,725,000 |
| Israeli Trade Act | 50,000 | | |

*TAA/CBTI=Trade Agreements Act/Caribbean Basin Trade Initiative.

■ 16. Amend section 25.403 by—

■ a. Revising paragraph (a);

■ b. Removing paragraph (b)(1) and redesignating paragraphs (b)(2) through (b)(4) as (b)(1) through (b)(3); and

■ c. Revising paragraph (c) to read as follows:

25.403 Trade Agreements Act.

(a) *General.* The Trade Agreements Act—

(1) Authorizes waiver of application of the Buy American Act to the end products and construction materials of designated countries;

(2) Prohibits discriminatory practices based on foreign ownership;

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

* * * * *

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

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

25.404 [Amended]

■ 17. Amend section 25.404 by adding the words “and services” after the words “end products”.

■ 18. In section 25.405, revise the section heading and text to read as follows:

25.405 Free Trade Agreements (FTAs).

(a) *General.* Eligible products from FTA countries are entitled to the same nondiscriminatory treatment specified under the Trade Agreements Act (see 25.403(a)).

(b) The FTAs do not prohibit the purchase of other foreign end products or services.

25.406 [Amended]

■ 19. Amend section 25.406 by removing “25.403(b)(1)” from the first sentence and adding “Subpart 25.4” in its place.

25.408 [Amended]

■ 20. Amend section 25.408 by—

■ a. Removing “NAFTA” from the introductory text of paragraph (a) and adding “an FTA” in its place;

■ b. Removing “(5.207(e)) for contracts that are subject to the Trade Agreements Act” from paragraph (a)(2); and

■ c. Removing “NAFTA” from paragraph (a)(5) and adding “FTA” in its place.

25.502 [Amended]

■ 21. Amend section 25.502 by—

■ a. Removing “25.401 and 25.403(b)” from the introductory text of paragraph (b) and adding “Subpart 25.4” in its place;

■ b. Removing “NAFTA” from paragraphs (b)(1) and (b)(3) and adding “FTA” in its place; and

■ c. Removing “NAFTA” from paragraph (c) introductory text and (c)(1) and adding “an FTA” in its place.

25.504–2 Trade Agreements Act/Caribbean Basin Trade Initiative/FTAs.

■ 22. Revise the section heading of 25.504–2 to read as set forth above.

25.504–3 FTA/Israeli Trade Act.

■ 23. Revise the section heading of 25.504–3 to read as set forth above.

25.601 [Amended]

■ 24. Amend section 25.601 by—

■ a. Removing “\$169,000” from paragraph (a)(1) and adding “\$175,000” in its place;

■ b. Removing “\$6,481,000” from paragraph (a)(2) and adding “\$6,725,000” in its place;

■ c. Removing “\$169,000” from paragraph (a)(3)(ii) and adding “\$175,000” in its place; and

■ d. Removing “25.403(b)” from paragraph (b) and adding “Subpart 25.4” in its place.

25.1002 [Amended]

■ 25. Amend section 25.1002 in the first sentence of paragraph (a) by removing “25.408(a)(3)” and adding “25.408(a)(4)” in its place.

■ 26. Amend section 25.1101 by—

■ a. Removing “North American Free Trade Agreement” from the introductory text of paragraph (b)(1)(i) and adding “Free Trade Agreements” in its place;

■ b. Removing “\$169,000” from paragraph (b)(1)(i)(A) and adding “\$175,000” in its place;

■ c. Removing “\$56,190” from paragraph (b)(1)(iii) and adding “\$58,550” in its place;

■ d. Removing “North American Free Trade Agreement” from paragraph (b)(2)(i) and adding “Free Trade Agreements” in its place; and removing

“\$56,190” from paragraph (b)(2)(iii) and adding “\$58,550” in its place;

■ e. Removing “\$169,000” and “25.401 and 25.403” from the first sentence of paragraph (c)(1) and adding “\$175,000” and “Subpart 25.4” in their place, respectively; and

■ f. Removing “\$169,000” from paragraph (d) and adding “\$175,000” in its place.

■ 27. Amend section 25.1102 by—

■ a. Removing “\$6,481,000” from paragraph (a) and the introductory text of paragraph (c) and adding “\$6,725,000” in its place;

■ b. Removing “NAFTA” from paragraph (c)(1) and adding “FTA” in its place; and

■ c. Revising paragraphs (c)(3) and (d)(3) to read as follows:

25.1102 Acquisition of construction.

* * * * *

(c) * * *

(3) For acquisitions valued at \$6,725,000 or more, but less than \$7,611,532, use the clause with its Alternate I. 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 Chilean construction material.

(d) * * *

(3) For acquisitions valued at \$6,725,000 or more, but less than \$7,611,532, use the clause with its Alternate II.

25.1103 [Amended]

■ 28. Amend section 25.1103 in paragraph (c) by removing “\$169,000”

from paragraphs (c)(1)(i) and (c)(1)(ii)(B) and adding “\$175,000” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES 52.212–3 [Amended]

■ 29. Amend section 52.212–3 by—

■ a. Revising the date of the provision to read “(Jan 2004)”;

■ b. Removing “North American Free Trade Agreement” from paragraphs (g)(1) (twice) and (g)(1)(i) and adding “Free Trade Agreements” in its place;

■ c. Removing “NAFTA” from paragraph (g)(1)(ii) and adding “FTA” in its place, removing “North American Free Trade Agreement” and adding “Free Trade Agreements” in its place, and removing “NAFTA” from the table heading and adding “FTA” in its place;

■ d. Removing “North American Free Trade Agreement” from paragraph (g)(1)(iii) and adding “Free Trade Agreements” in its place;

■ e. Removing from paragraph (g)(2) “North American”, removing “May 2002” and adding “Jan 2004” in its place, and removing “North American Free Trade Agreement” from paragraph (g)(1)(ii) and adding “Free Trade Agreements” in its place;

■ f. Removing from paragraph (g)(3) “North American”, removing “May 2002” and adding “Jan 2004” in its place, and removing from paragraph (g)(1)(ii) “North American Free Trade Agreement” and adding “Free Trade Agreements” in its place; and

■ g. Removing “NAFTA” from paragraphs (g)(4)(i), (g)(4)(ii), and (g)(4)(iii) (twice) and adding “FTA” in its place.

■ 30. Amend section 52.212–5 by revising the date of the clause and paragraphs (b)(14), (b)(22), and (b)(23) 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 (Jan 2004)

* * * * *

(b) * * *

— (14) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Jan 2004) (E.O. 13126).

* * * * *

— (22)(i) 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act (Jan 2004) (41 U.S.C. 10a–10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108–77, 108–78).

— (ii) Alternate I (Jan 2004) of 52.225–3.

— (iii) Alternate II (Jan 2004) of 52.225–3.

(23) 52.225-5, Trade Agreements (Jan 2004) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

52.213-4 [Amended]

■ 31. Amend section 52.213-4 by revising the date of the clause to read "(Jan 2004)", and by removing "(Sept 2002)" from paragraph (b)(1)(i) of the clause and adding "(Jan 2004)" in its place.

52.222-19 [Amended]

■ 32. Amend section 52.222-19 by revising the date of the clause to read "(Jan 2004)"; removing "\$56,190" from paragraph (a)(3) and adding "\$58,550" in its place; and removing "\$169,000" from paragraph (a)(4) and adding "\$175,000" in its place.

■ 33. Amend section 52.225-3 by—

- a. Revising the section and clause headings;
■ b. Removing the definitions "North American Free Trade Agreement country" and "North American Free Trade Agreement country end product" from paragraph (a); and adding, in alphabetical order, the definitions "Free Trade Agreement country" and "Free Trade Agreement country end product";
■ c. Removing paragraph (c) and redesignating paragraph (d) as (c) and revising it;
■ d. Adding paragraph (d);
■ e. Revising the introductory text of Alternate I; redesignating paragraph (d) of Alternate I as paragraph (c) and removing "North American Free Trade Agreement" and adding "Free Trade Agreements" in its place; and
■ f. Revising the introductory text of Alternate II; redesignating paragraph (d) of Alternate II as paragraph (c) and removing "North American Free Trade Agreement" and adding "Free Trade Agreements" in its place. The revised and added text reads as follows:

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

Buy American Act—Free Trade Agreements—Israeli Trade Act (Jan 2004)

(a) * * *
Free Trade Agreement country means Canada, Chile, Mexico, or Singapore.
Free Trade Agreement country end product means an article that—
(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) 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 an FTA 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.

(c) Delivery of end products. The Contracting Officer has determined that FTAs 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—Free Trade Agreements—Israeli Trade Act Certificate." If the Contractor specified in its offer that the Contractor would supply an FTA country end product or an Israeli end product, then the Contractor shall supply an FTA country end product, an Israeli end product or, at the Contractor's option, a domestic end product.

(d) United States law will apply to resolve any claim of breach of this contract.

(End of clause)
Alternate I (Jan 2004). As prescribed in 25.1101(b)(1)(ii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

Alternate II (Jan 2004). As prescribed in 25.1101(b)(1)(iii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

- 34. Amend section 52.225-4 by—
■ a. Revising the section and clause headings;
■ b. Removing "North American Free Trade Agreement" from paragraph (a) and adding "Free Trade Agreements" in its place;
■ c. Removing "NAFTA" from paragraph (b) and adding "FTA" in its place, removing "North American Free Trade Agreement" and adding "Free Trade Agreements" in its place, and removing "NAFTA" from the table heading and adding "FTA" in its place;
■ d. Removing "North American Free Trade Agreement" from paragraph (c) and adding "Free Trade Agreements" in its place;
■ e. Removing from the introductory text of Alternate I "May 2002" and adding "Jan 2004" in its place, and removing from paragraph (b) "North American Free Trade Agreement" and adding "Free Trade Agreements" in its place; and
■ f. Removing from the introductory text of Alternate II "May 2002" and adding "Jan 2004" in its place, and removing from paragraph (b) "North American Free Trade Agreement" and adding "Free Trade Agreements" in its place.

The revised text reads as follows:

52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate

Buy American Act—Free Trade Agreement—Israeli Trade Act Certificate (Jan 2004)

- 35. Amend section 52.225-5 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (a) the definitions "North American Free Trade Agreement country" and "North American Free Trade Agreement country end product"; and adding, in alphabetical order, the definitions "Free Trade Agreement country" and "Free Trade Agreement country end product"
■ c. Removing paragraph (b);
■ d. Redesignating paragraph (c) as paragraph (b);
■ e. Amending the newly designated paragraph (b), in the first sentence by removing "NAFTA" and adding "FTAs" in its place, and in the last sentence removing "NAFTA" and adding "FTA" in its place; and
■ f. Adding a new paragraph (c) to read as follows:

52.225-5 Trade Agreements.

Trade Agreements (Jan 2004)

(a) Definitions. * * *
Free Trade Agreement country means Canada, Chile, Mexico, or Singapore.
Free Trade Agreement country end product means an article that—
(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) 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 an FTA 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.

(c) United States law will apply to resolve any claim of breach of this contract. (End of clause)

52.225-6 [Amended]

- 36. Amend section 52.225-6 by revising the date of the provision to read "Jan 2004", and in paragraphs (a), (b), and (c) (twice) by removing "NAFTA" and adding "FTA" in its place.
■ 37. Amend section 52.225-11 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (a) the definitions “North American Free Trade Agreement country” and “North American Free Trade Agreement country construction material” and adding, in alphabetical order, the definitions “Free Trade Agreement country” and “Free Trade Agreement country construction material”
- c. Revising paragraph (b)(1);
- d. Amending paragraph (b)(2) by removing “NAFTA” and adding “FTA” in its place;
- e. Adding a new paragraph (e); and
- f. Revising Alternate I to read as follows:

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

* * * * *

Buy American Act—Construction Materials Under Trade Agreements (Jan 2004)

(a) *Definitions.* * * *

* * * * *

Free Trade Agreement country means Canada, Chile, Mexico, or Singapore.

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

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

* * * * *

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

* * * * *

(e) United States law will apply to resolve any claim of breach of this contract.

(End of clause)

Alternate I (Jan 2004). As prescribed in 25.1102(c)(3), delete the definitions of “Free Trade Agreement country” and “Free Trade Agreement country construction material” from the definitions in paragraph (a) of the basic clause, add the following definition of “Chilean construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Chilean construction material means a construction material that—

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

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

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

■ 38. Amend section 52.225-12 by—

■ a. Revising the date of the provision;

■ b. Removing “NAFTA” from paragraphs (a), (d)(1) (twice), and (d)(3) (twice) and adding “FTA” in its place; and

■ c. Revising the date, paragraphs (a), (d)(1), and the introductory text of (d)(3) of Alternate II to read as follows:

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

* * * * *

Notice of Buy American Requirement—Construction Materials Under Trade Agreements (Jan 2004)

* * * * *

(End of provision)

Alternate II (Jan 2004). * * *

(a) *Definitions.* *Chilean construction material, construction material, designated country 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—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

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

* * * * *

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or Chilean construction material, and the offeror shall be required to furnish such domestic, designated country, or Chilean construction material. An offer based on use of the foreign construction material for which an exception was requested—

* * * * *

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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. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-19 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2001-19, which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

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

LIST OF RULES IN FAC 2001-19

| Item | Subject | FAR case | Analyst |
|---------|---|-----------|---------|
| I | New Consolidated Form for Selection of Architect-Engineer Contractors | 2000-608A | Davis. |