

exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);

(ii) The application of the restriction of the Buy American Act 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.

(5) The Contractor agrees that only domestic construction materials, NAFTA country construction materials, or designated country construction materials will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in paragraph (b)(3) of this clause.

(c) *Request for determination.* (1) Contractors requesting to use foreign

construction material under paragraph (b)(4) of this clause shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(4) of this clause. A submission 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. 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).

(2) If the Government determines after contract award that an exception to the Buy American Act applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(4)(i) of this clause.

(3) If the Government does not determine that an exception to the Buy American Act applies, the use of that particular foreign construction material will be a failure to comply with the Act.

(d) For evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

#### FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) <sup>1</sup>
Item 1:			
Foreign construction material .....	.....	.....	.....
Domestic construction material .....	.....	.....	.....
Item 2:			
Foreign construction material .....	.....	.....	.....
Domestic construction material .....	.....	.....	.....

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

<sup>1</sup> Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

(End of clause)

*Alternate I* (MAY 1997). As prescribed in 25.207(d)(2), substitute the following paragraphs (b)(2) and (b)(5) for paragraphs (b)(2) and (b)(5) of the basic clause:

(b)(2) The North American Free Trade Agreement (NAFTA) provides that NAFTA construction materials are exempted from application of the Buy American Act.

(b)(5) The Contractor agrees that only domestic construction materials or NAFTA country construction materials will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in paragraph (b)(3) of this clause.

#### 52.225-22 [Amended]

8. Section 52.225-22 is amended by revising the clause date to read "(MAY 1997)"; and in the definition of "Domestic construction material" by removing "25.202(a)(3)" and inserting "25.202(a)(2)".

[FR Doc. 97-6315 Filed 3-14-97; 8:45 am]

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#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 26 and 52

[FAC 90-46; FAR Case 95-306; Item VII]  
RIN 9000-AH02

#### Federal Acquisition Regulation; Collection of Historically Black Colleges and Universities/Minority Institutions Award Data

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 12928, which requires agencies to provide periodic reporting on the progress made in award of contracts to Historically Black Colleges and Universities and

Minority Institutions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**DATES:** Effective May 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-46, FAR case 95-306.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends FAR Parts 26 and 52 to implement Executive Order 12928, which states that agencies will provide periodic reporting on their progress made in awards to Historically Black Colleges and Universities and Minority Institutions. The rule contains a new FAR subpart and solicitation provision.

A proposed rule was published in the Federal Register at 61 FR 31792, June 20, 1996. Five sources submitted comments in response to the proposed

rule. All comments were considered in the development of the final rule.

#### 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 primarily pertains to Government reporting requirements and merely requires offerors to provide certain identification information when responding to a solicitation.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act is deemed to apply because the final rule contains a new information collection requirement. Accordingly, a request for approval of a new information collection requirement has been submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through a Federal Register notice published on January 16, 1997.

#### List of Subjects in 48 CFR Parts 26 and 52

Government procurement.

Dated: March 7, 1997.

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

Therefore, 48 CFR Parts 26 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 26 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 26—OTHER SOCIOECONOMIC PROGRAMS

2. Subpart 26.3, consisting of sections 26.300 through 26.304, is added to read as follows:

##### Subpart 26.3—Historically Black Colleges and Universities and Minority Institutions

Sec.

26.300 Scope of subpart.

26.301 Definitions.

26.302 General policy.

26.303 Data collection and reporting requirements.

26.304 Solicitation provision.

##### 26.300 Scope of subpart.

(a) This subpart implements Executive Order 12928 of September 16, 1994, which promotes participation of Historically Black Colleges and

Universities (HBCUs) and Minority Institutions (MIs) in Federal procurement.

(b) This subpart does not pertain to contracts performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands.

##### 26.301 Definitions.

As used in this subpart—

*Historically Black College or University* means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For DoD, NASA, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority Institution* means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which, for the purpose of this subpart, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

##### 26.302 General policy.

It is the policy of the Government to promote participation of HBCUs and MIs in Federal procurement.

##### 26.303 Data collection and reporting requirements.

Executive Order 12928 requires periodic reporting to the President on the progress of departments and agencies in complying with the laws and requirements mentioned in the Executive order.

##### 26.304 Solicitation provision.

The contracting officer shall insert the provision at 52.226-2, *Historically Black College or University and Minority Institution Representation*, in solicitations exceeding the micro-purchase threshold, for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

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

3. Section 52.226-2 is added to read as follows:

##### 52.226-2 Historically Black College or University and Minority Institution Representation.

As prescribed in 26.304, insert the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION REPRESENTATION (MAY 1997)

(a) *Definitions.* As used in this provision—*Historically Black College or University* means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority Institution* means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which, for the purpose of this provision, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

(b) *Representation.* The offeror represents that it—

☐ is ☐ is not a Historically Black College or University;

☐ is ☐ is not a Minority Institution.

(End of provision)

[FR Doc. 97-6316 Filed 3-14-97; 8:45 am]

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#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

##### 48 CFR Part 31

[FAC 90-46; FAR Case 95-021; Item VIII]

RIN 9000-AH04

##### Federal Acquisition Regulation; Allowability of Foreign Selling Costs

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the ceiling on allowable foreign selling costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**DATES:** Effective May 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755.