

- b. Remove from paragraph (b)(1) "Ordering Offices can place" and add "Place" in its place;
- c. Revise the introductory text of paragraph (b)(2);
- d. Revise paragraph (b)(2)(i);
- e. Remove from the last sentence of the introductory text of paragraph (b)(3) ", ordering offices shall";
- f. Revise paragraph (b)(3)(i);
- g. Revise the first sentence in paragraph (b)(3)(iii); and
- h. Revise paragraphs (b)(4), (b)(5), and (b)(6) to read as follows:

#### 8.404 Using schedules.

(a) *General.* Parts 13 and 19 do not apply to orders placed against Federal Supply Schedules, except for the provision at 13.303-2(c)(3). Orders placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (see 6.102(d)(3)). Therefore, ordering offices need not seek further competition, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

(b) \* \* \*

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, consider reasonably available information about the supply or service offered under MAS contracts by using the "GSA Advantage!" on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see 8.404(b)(6)). Select the delivery and other options available under the schedule that meet the agency's needs. When selecting the supply or service representing the best value, the ordering office may consider—

(i) Special features of the supply or service required for effective program performance;

\* \* \* \* \*

(3) \* \* \*

(i) Review additional schedule contractors' catalogs or pricelists, or use the "GSA Advantage!" on-line shopping service;

\* \* \* \* \*

(iii) After seeking price reductions, place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative (see 8.404(a)). \* \* \*

(4) *Blanket purchase agreements (BPAs).* Agencies may establish BPAs (see 13.303-2(c)(3)) when following the ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address ordering frequency, invoicing, discounts, and delivery locations and times.

(5) *Price reductions.* In addition to the circumstances in paragraph (b)(3) of this section, there may be other reasons to request a price reduction. For example, seek a price reduction when the supply or service is available elsewhere at a lower price or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of the individual order, offer the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

(6) *Small business.* When conducting evaluations and before placing an order, consider including, if available, one or more small, women-owned small, and/or small disadvantaged business schedule contractor(s). Orders placed against the schedules may be credited toward the ordering agency's small business goals. For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

\* \* \* \* \*

#### PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

4. Revise section 38.101 to read as follows:

##### 38.101 General.

(a) The Federal Supply Schedule program, pursuant to 41 U.S.C. 259(b)(3)(A), provides Federal agencies with a simplified process of acquiring commonly used supplies and services in varying quantities while obtaining volume discounts. Indefinite-delivery contracts (including requirements contracts) are awarded using competitive procedures to commercial firms. The firms provide supplies and services at stated prices for given periods of time, for delivery within a stated geographic area such as the 48

contiguous states, the District of Columbia, Alaska, Hawaii, and overseas. The schedule contracting office issues Federal Supply Schedules that contain information needed for placing orders.

(b) Each schedule identifies agencies that are required to use the contracts as primary sources of supply.

(c) Federal agencies not identified in the schedules as mandatory users may issue orders under the schedules. Contractors are encouraged to accept the orders.

(d) Although GSA awards most Federal Supply Schedule contracts, it may authorize other agencies to award schedule contracts and publish schedules. For example, the Department of Veterans Affairs awards schedule contracts for certain medical and nonperishable subsistence items.

(e) When establishing Federal Supply Schedules, GSA, or an agency delegated that authority, is responsible for complying with all applicable statutory and regulatory requirements (e.g., Parts 5, 6, and 19). The requirements of Parts 5, 6, and 19 apply at the acquisition planning stage prior to issuing the schedule solicitation and do not apply to orders and BPAs placed under resulting schedule contracts (see 8.404).

[FR Doc. 00-13821 Filed 6-1-00; 4:00 pm]

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#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 25 and 52

[FAC 97-18; FAR Case 2000-004; Item VI]

RIN 9000-A178

#### Federal Acquisition Regulation; Trade Agreements Thresholds

**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 new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement

(NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 65 FR 17332, March 31, 2000.

**DATES:** *Effective Date:* June 6, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after June 6, 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 97-18, FAR case 2000-004.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends FAR Subparts 25.2, 25.4, 25.6, and 25.11 to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 65 FR 17332, March 31, 2000.

The rule also amends the clauses at FAR 52.225-11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, and 52.225-12, Notice of Buy American Act—Balance of Payments Program Requirements—Construction Materials under Trade Agreements. This rule revises Alternate I to FAR 52.225-11, because the threshold for NAFTA construction is now higher than the threshold for TAA construction, and adds the corresponding alternate to 52.225-12.

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 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 97-18, FAR case 2000-004), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act applies. However, the Councils' amendments to the FAR do not change information collection requirements previously approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The approved OMB clearances for the affected clauses are 9000-0022, 9000-0023, 9000-0024, 9000-0025, 9000-0130, and 9000-0141.

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

Government procurement.

Dated: May 26, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

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

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

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

**PART 25—FOREIGN ACQUISITION**

2. In section 25.202, revise paragraph (c) to read as follows:

**25.202 Exceptions.**

\* \* \* \* \*

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of \$6,806,000 or more, see 25.403. If the acquisition value is \$7,068,419 or more, also see 25.405.

3. In section 25.403, revise paragraph (b)(1) to read as follows:

**25.403 Trade Agreements Act.**

\* \* \* \* \*

(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 \$177,000 or more; the Trade Agreements Act applies to an acquisition for construction if the estimated value of the acquisition is \$6,806,000 or more. These dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years (see Executive Order 12260).

\* \* \* \* \*

**25.405 [Amended]**

4. Amend section 25.405 as follows:  
a. In paragraph (a) remove "\$53,150" and add "\$54,372" in its place;  
b. In paragraph (b) remove "\$6,909,500" and add "\$7,068,419" in its place; and  
c. In paragraph (c) remove "\$53,150" and "\$6,909,500" and add in their

places "\$54,372" and "\$7,068,419", respectively.

**25.601 [Amended]**

5. Amend paragraph (a) of section 25.601 as follows:

- a. In paragraph (a)(1) remove "\$186,000" and add "\$177,000" in its place;
- b. In paragraph (a)(2) remove "\$7,143,000" and add "\$6,806,000" in its place; and
- c. In paragraph (a)(3)(ii) remove "\$186,000" and add "\$177,000" in its place.

**25.1101 [Amended]**

6. Amend section 25.1101 as follows:

- a. In paragraph (b)(1)(i) remove "\$186,000" and add "\$177,000" in its place;
- b. In paragraphs (b)(1)(iii) and (b)(2)(iii) remove "\$53,150" and add in their places "\$54,372"; and
- c. In paragraphs (c)(1) and (d) remove "\$186,000" and add in their places "\$177,000".

7. Amend section 25.1102 as follows:

- a. In paragraphs (a) and (c) remove "\$6,909,500" and add in their places "\$6,806,000";
- b. Revise paragraph (c)(3); and
- c. Add paragraph (d)(3) to read as follows:

**25.1102 Acquisition of construction.**

\* \* \* \* \*

(c) \* \* \*

(3) For acquisitions valued at \$6,806,000 or more, but less than \$7,068,419, use the clause with its Alternate I.

\* \* \* \* \*

(d) \* \* \*

(3) For acquisitions valued at \$6,806,000 or more, but less than \$7,068,419, use the clause with its Alternate II.

**25.1103 [Amended]**

8. Amend section 25.1103 in paragraphs (c)(1)(i) and (c)(1)(ii)(B) by removing "\$186,000" and adding "\$177,000" in their places.

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

9. In section 52.225-11, in the introductory paragraph remove "25.1102(c)(1)" and add "25.1102(c)" in its place; and revise Alternate I to read as follows:

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

\* \* \* \* \*

*Alternate I (June 2000).* As prescribed in 25.1102(c)(3), delete the definitions of "North

American Free Trade Agreement country" and "North American Free Trade Agreement country construction material" from the definitions in 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:

(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 applies to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country construction materials.

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

10. In section 52.225-12, add Alternate II to read as follows:

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

\* \* \* \* \*

*Alternate II (June 2000).* As prescribed in 25.1102(d)(3), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic provision:

(a) *Definitions.* "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—Balance of Payments Program—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 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 or designated 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 or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was

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

(ii) May be accepted if revised during negotiations.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 25 and 52**

[FAC 97-18; FAR Case 1999-008; Item VII]

RIN 9000-AI54

**Federal Acquisition Regulation; Restrictions on Acquisitions from Yugoslavia and Afghanistan**

**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 two Executive orders, as modified by Office of Foreign Assets Control (OFAC) General Licenses Numbers 2 and 4. These Executive orders prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban.

**DATES:** *Effective Date:* July 6, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after July 6, 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 97-18, FAR case 1999-008.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends FAR Subpart 25.7, section 25.1103, and the clauses at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—

Commercial Items, FAR 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), and FAR 52.225-13, Restrictions on Foreign Purchases, to implement Executive Order 13121 of April 30, 1999, Blocking Property and Prohibiting Transactions With the Taliban; and Executive Order 13129 of July 4, 1999, Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo. These Executive orders, as modified by OFAC General Licenses Numbers 2 and 4, prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban. As a matter of policy, the Government does not generally acquire, even for overseas use, supplies or services that cannot be imported lawfully into the United States.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on December 1, 1999 (64 FR 67446). Four respondents submitted comments. The Councils considered all comments in the formulation of this final rule. This final rule differs from the proposed rule as follows:

- Limits the restriction to Serbia (excluding the territory of Kosovo), rather than Serbia and Montenegro, based on OFAC General Licenses Numbers 2 and 4. General License No. 2 was issued by OFAC on May 5, 1999, and relates to trade transactions with Montenegro. General License No. 4 was issued by OFAC on August 17, 1999, and relates to trade transactions involving the territory of Kosovo.

- Adds an exception at FAR 25.701(a)(2) permitting the contracting officer, in unusual circumstances, to acquire for use outside the United States supplies and services restricted in 25.701(a)(1).

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