

**ECONOMIC PRICE ADJUSTMENT—  
STANDARD SUPPLIES (JAN 1997)**

(a) \* \* \* The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor.

\* \* \* \* \*

23. Section 52.216-3 is amended by revising the introductory paragraph, the clause date, and the second sentence of paragraph (a) to read as follows:

**52.216-3 Economic Price Adjustment—  
Semistandard Supplies.**

As prescribed in 16.203-4(b), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

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**48 CFR Parts 5, 14, 15, 17, 25, 27, and  
52**

[FAC 90-45; FAR Case 93-310; Item VI]

RIN 9000-AF60

**Federal Acquisition Regulation;  
Implementation of the North American  
Free Trade Agreement Implementation  
Act**

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

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule implementing the North American Free Trade Agreement (NAFTA) Implementation Act related to applications of the Buy American Act provisions to acquisition of certain Mexican and Canadian products. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul L. Linfield at (202) 501-1757 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 90-45, FAR case 93-310.

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

An interim rule was published in the Federal Register on January 5, 1994 (59 FR 544, FAC 90-19), FAR case 93-310, to implement NAFTA. Based on the analysis of public comments, a revised interim rule was published in the Federal Register on June 20, 1996 (61 FR 31646) (FAC 90-39). One late public comment was received and considered, but was not incorporated in the final rule. This final rule does contain revisions resulting from public comments received on FAR Case 96-312 published as Item II in this FAC. Upon consideration of those public comments, certifications eliminated under the interim rule published at 61 FR 31646 are being retained. The Government believes if the certifications were eliminated, offerors would be required to submit more detailed information regarding the origins of offered products. Without this information, enforcing a national policy grounded in vital economic and security interests would be extremely difficult. To satisfy this national policy interest, the self-policing discipline of a certification was determined to be the less burdensome alternative.

**B. Regulatory Flexibility Act**

This final rule is 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.*, because the rule waives the Buy American Act for certain Mexican and Canadian products. A Final Regulatory Flexibility Analysis (FRFA) has been prepared. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows: This final rule generally applies to all businesses, large and small, that contract with Federal agencies other than the Department of Defense for supply contracts with an estimated value above \$25,000. This final rule also applies to Federal construction contracts, including those awarded by the Department of Defense, with an acquisition value of \$6,500,000 or more. Although U.S. businesses may face increased competition from Canadian or Mexican firms, they may also find an

increased market for their materials in Canada and Mexico.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act applies because the provision at FAR 52.225-20 requires offerors to list the line item number and the country of origin for any end product other than a domestic end product. Accordingly, a request for clearance of the information collection requirement was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* and has been approved under OMB Control Number 9000-0130.

List of Subjects in 48 CFR Parts 5, 14, 15, 17, 25, 27, and 52

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

**Interim Rule Adopted as Final With  
Changes**

Accordingly, the interim rule amending 48 CFR Parts 5, 14, 15, 17, 25, 27, and 52, which was published at 59 FR 544 on January 5, 1994, and amended by the interim rule published at 61 FR 31646 on June 20, 1996, is adopted as final with changes as set forth below:

1. The authority citation for 48 CFR Parts 5, 14, 15, 17, 25, 27, 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****25.408 [Amended]**

2. Section 25.408 is amended in paragraph (a)(3) by removing the word "Provision" in the title of the provision and inserting "Certificate".

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

3. Section 52.212-3 is amended by revising the date of the provision and paragraphs (g)(1)(i), (g)(1)(iii), and (g)(2) to read as follows:

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

\* \* \* \* \*

**OFFEROR REPRESENTATIONS AND  
CERTIFICATIONS—COMMERCIAL ITEMS  
(JAN 1997)**

\* \* \* \* \*

(g)(1) \* \* \*

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

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

\* \* \* \* \*

(iii) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(1)(ii) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. The offeror certifies that the following supplies qualify as “NAFTA country end products” as that term is defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program”:

\_\_\_\_\_

(Insert line item numbers)

\* \* \* \* \*

(2) *Alternate I.* If Alternate I to the clause at 52.225–21 is included in this solicitation, substitute the following paragraph (g)(1)(iii) for paragraph (g)(1)(iii) of this provision:

(g)(1)(iii) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are Canadian end products. Products that are not identified and certified below will not be deemed Canadian end products.

The offeror certifies that the following supplies qualify as “Canadian end products” as that term is defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program”:

\_\_\_\_\_

(Insert line item numbers)

\* \* \* \* \*

(End of provision)

4. Section 52.225–20 is amended in the section heading and provision heading by removing the word “Provision” and inserting “Certificate”; revising the date of the provision and its Alternate I to read “(JAN 1997)”; revising paragraph (a) of the provision; revising the first paragraph of paragraph (c) of the provision and of Alternate I; and by inserting the words “offeror certifies that the” after the first word “The” in the first sentence of the second paragraph of paragraph (c) of the provision and of Alternate I to read as follows:

**52.225–20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.**

\* \* \* \* \*

BUY AMERICAN ACT—NORTH AMERICAN FREE TRADE AGREEMENT  
IMPLEMENTATION ACT—BALANCE OF  
PAYMENTS PROGRAM CERTIFICATE

(JAN 1997)

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

\* \* \* \* \*

(c) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products.

\* \* \* \* \*

*Alternate I (JAN 1997). \* \* \**

(c) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are Canadian end products. Products that are not identified below will not be deemed Canadian end products.

\* \* \* \* \*

**52.225–21 [Amended]**

5. Section 52.225–21 is amended by revising the date of the clause to read “(JAN 1997)” and by removing the word “specifying” in the fourth sentence of paragraph (c) of the clause and of Alternate I and inserting “certifying”.

[FR Doc. 96–33210 Filed 12–31–96; 8:45 am]

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**48 CFR Parts 5, 6, 11, 12 and 13**

[FAC 90–45; FAR Case 96–307; Item VII]

RIN 9000–AH20

**Federal Acquisition Regulation;  
Application of Special Simplified  
Procedures to Certain 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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4202 requires revisions to the FAR to incorporate special simplified procedures for the acquisition of certain commercial items with a value greater than the simplified acquisition threshold (\$100,000) but not greater than \$5 million. The purpose of this revision is to vest contracting officers with additional procedural discretion, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry. 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.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Victoria Moss at (202) 501–4764 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 90–45, FAR case 96–307.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends the Federal Acquisition Regulation to implement section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4202 authorizes special simplified procedures for acquisitions of commercial items at amounts greater than the simplified acquisition threshold (\$100,000) but not greater than \$5 million, when the contracting officer reasonably expects, based on the nature of the commercial items sought and on market research, that offers will include only commercial items. The authority to use the special simplified procedures under this section expires on January 1, 2000. Section 4202 also amends 41 U.S.C. 416 to permit issuance of solicitations for commercial items in fewer than 15 days after the synopsis notice is published.

A proposed rule was published in the Federal Register on September 6, 1996 (61 FR 47384). Twenty-four sources