

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 requested—

(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

meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only applies to acquisition of items from Serbia or Afghanistan.

### 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 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. Amend section 25.701 by revising paragraph (a) to read as follows:

#### 25.701 Restrictions.

(a)(1) The Government generally does not acquire supplies or services that cannot be imported lawfully into the United States. Therefore, except as provided in paragraph (a)(2) of this section, 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

- (i) Cuba (31 CFR part 515);
- (ii) Iran (31 CFR part 560);
- (iii) Iraq (31 CFR part 575);
- (iv) Libya (31 CFR part 550);
- (v) North Korea (31 CFR part 500);
- (vi) Sudan (31 CFR part 538);
- (vii) Territory of Afghanistan

controlled by the Taliban (Executive Order 13129 of July 4, 1999, Blocking Property and Prohibiting Transactions With the Taliban); or

(viii) Serbia, excluding the territory of Kosovo (Executive Order 13121 of April 30, 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).

(2)(i) Unless agency procedures require a higher level of approval, the

contracting officer may, in unusual circumstances, acquire for use outside the United States supplies and services restricted in paragraph (a)(1) of this section. Examples of unusual circumstances are an emergency or when the supplies or services are not otherwise available and a substitute is not acceptable.

(ii) The contracting officer must provide documentation in the contract file whenever this exception is used.

\* \* \* \* \*

3. Revise section 25.702 to read as follows:

#### 25.702 Source of further information.

Refer questions concerning the restrictions in 25.701 to the Department of the Treasury, Office of Foreign Assets Control, Washington, D.C. 20220 (Telephone (202) 622-2520).

4. Amend section 25.1103 by revising paragraph (a) to read as follows:

#### 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, unless an exception applies (see 25.701(a)(2)).

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212-5 by—

a. Revising the date of the clause and paragraph (a);

b. In the first sentence of the introductory text of paragraphs (b), (c), and (d), by removing “agrees to” and adding “shall” in their place; and

c. Removing paragraph (b)(21) and redesignating paragraphs (b)(19) and (b)(20) as (b)(20) and (b)(21), respectively; and adding a new paragraph (b)(19) 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 (July 2000)

(a) The Contractor shall 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) 52.233-3, Protest after Award (31 U.S.C. 3553).

(b) \* \* \*

; (19) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

\* \* \* \* \*

6. Amend section 52.213-4 by revising the date of the clause and paragraph (a)(1)(ii) 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) (July 2000)

(a) \* \* \*

(1) \* \* \*

\* \* \* \* \*

(ii) 52.225-13, Restrictions on Certain Foreign Purchases (July 2000) (E.O.'s 12722, 12724, 13059, 13067, 13121, and 13129).

\* \* \* \* \*

7. Amend section 52.225-13 by revising the date of the clause and the last sentence of paragraph (a) to read as follows:

#### 52.225-13 Restrictions on Certain Foreign Purchases.

\* \* \* \* \*

#### Restrictions on Certain Foreign Purchases (July 2000)

(a) \* \* \* Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

\* \* \* \* \*

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### DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 30 and 52

[FAC 97-18; FAR Case 2000-301; Item VIII]

RIN 9000-AI79

#### Federal Acquisition Regulation; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage

**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 Section 802 of the National Defense