

including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

"WARNING: Contains (or manufactured with, if applicable) *, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere."

* The Contractor shall insert the name of the substance(s).

(End of clause)

[FR Doc. 96-14527 Filed 6-19-96; 8:45 am]

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48 CFR Parts 25 and 52

[FAC 90-39; FAR Case 95-304; Item XIII]

RIN 9000-AG80

Federal Acquisition Regulation; Uruguay Round (1996 Code)

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

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are finalizing without further change the interim rule on the renegotiated General Agreement on Tariffs and Trade (GATT) Government Procurement Agreement (1996 Code) (Uruguay Round). 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: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501-1759 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 90-39, FAR case 95-304.

SUPPLEMENTARY INFORMATION:

A. Background

This rule finalizes without further change the interim rule, published in the Federal Register on December 29, 1995 (60 FR 67514), which implemented the Uruguay Round Agreement Act, Public Law 103-465. No

public comments were received in response to the interim 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 does not impose any new requirements on contractors, large or small. The rule primarily changes the list of designated foreign countries and extends applicability of the Trade Agreements Act to all agencies for supply and construction contracts over certain dollar thresholds. However, those contracts which are now subject to the Trade Agreements Act were already subject to the Memorandum of Understanding between the United States of America and the European Community on Government Procurement. This change will have minimal impact on U.S. firms. The rule does not diminish existing preferences for small businesses, because purchases under small and small disadvantaged business preference programs are exempted from the Trade Agreements Act.

C. Paperwork Reduction Act

The final rule does not impose any new reporting or recordkeeping requirements which require OMB approval under 44 U.S.C. 3501, *et seq.* Contractors, which previously were required to respond to the now deleted provision at 52.225-16, Buy American Act—Supplies under European Community Agreement Certificate, will now be required to respond to the comparable provision at 52.225-8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate (OMB Control No. 9000-0046).

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Interim Rule Adopted as Final

Accordingly, the interim rule amending 48 CFR Parts 25 and 52, which was published at 60 FR 67514, December 29, 1995, is adopted as final without further change.

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).

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.
[FR Doc. 96-14528 Filed 6-19-96; 8:45 am]

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48 CFR Parts 25, 27, and 52

[FAC 90-39, FAR Case 93-310, Item XIV]

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: Revised interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to a revised interim rule implementing the North American Free Trade Agreement (NAFTA) Implementation Act. 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.

DATES: Effective Date: June 20, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 19, 1996, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW., Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-39, FAR case 93-310 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501-1759 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 90-39, FAR case 93-310.

SUPPLEMENTARY INFORMATION:

A. Background

While the North American Free Trade Agreement (NAFTA) remains in effect, the Canadian Free Trade Agreement (CFTA) is suspended. The CFTA interim rule published December 30, 1988 (53 FR 53340, FAC 84-41, FAR case 88-070), which revised the FAR coverage

concerning Canadian products, has been revised and updated by FAR case 93-310, which implements NAFTA. As a result, FAR case 88-070 was closed into FAR case 93-310.

An interim rule was published January 5, 1994 (59 FR 544, FAC 90-19, FAR case 93-310), to implement NAFTA. Based on the analysis of public comments, the interim rule has been revised to—

(1) Add language to FAR 25.402 to address the applicability of NAFTA to services.

(2) Implement Article 1709(10) of NAFTA and Section 6 of Executive Order 12889 of December 27, 1993. FAR 27.208 is added to make contracting personnel aware of the requirements to obtain authorization from the owner of technology covered by a valid patent prior to use by or for the Federal Government and of waivers permitted under Section 6 of Executive Order 12889.

(3) Revise 52.212-3 and 52.212-5 to reflect changes to 52.225-20 and 52.225-21, accomplished in this revised interim rule.

(4) Add alternates for the provision at 52.225-20 and the clause at 52.225-21 for use in procurements between \$25,000 and \$50,000.

(5) Add a new clause 52.225-22, "Balance of Payments Program—Construction Materials—NAFTA," for construction contracts awarded outside the United States with an estimated value over \$6,500,000.

B. Regulatory Flexibility Act

The amendments in this revised interim rule are 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.*, because (1) the new clause, "Balance of Payments Program—Construction Materials—NAFTA," is only for construction contracts awarded outside the United States; (2) the new coverage at 27.208 pertains only to patents held by parties from NAFTA countries; and (3) other changes are primarily for clarification or editorial. An Initial Regulatory Flexibility Analysis (IRFA) was prepared and provided to the Chief Counsel for Advocacy for the Small Business Administration when the interim rule was issued in January 1994. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C.

601 *et seq.* (FAC 90-39, FAR case 93-310), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

D. 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 compelling reasons exist to promulgate this revised interim rule without prior opportunity for public comment. This action is necessary because the North American Free Trade Agreement Implementation Act, signed into law on December 8, 1993, became effective on January 1, 1994, and several substantive changes to the existing interim rule are needed to fully implement the Act. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 25, 27, and 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 25, 27, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 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

2. Section 25.305 is amended in the section heading and in the heading of paragraph (c) by revising the word "clause" to read "clauses"; designating the existing paragraph (c) as (c)(1); and adding paragraph (c)(2) to read as follows:

25.305 Solicitation provision and contract clauses.

* * * * *

(c) * * *
(2) For construction contracts outside the United States, with an estimated value of \$6,500,000 or more, insert the clause at 52.225-22, Balance of

Payments Program—Construction Materials—NAFTA.

3. Section 25.402 is amended by adding paragraph (g) to read as follows:

25.402 Policy.

* * * * *

(g) The procedures in 25.405 apply to the acquisition of NAFTA country services. These are services provided by a firm established in a NAFTA country under service contracts with an estimated acquisition value of \$50,000 or more (\$6,500,000 or more for construction), except for the following excluded services (Federal Service Code or Category from the Federal Procurement Data System Product/Service Code Manual is indicated in parentheses):

(1) Information processing and related telecommunications services (D):

(i) Automated data processing (ADP) telecommunications and transmission services (D304).

(ii) ADP teleprocessing and timesharing services (D305).

(iii) Telecommunications network management services (D316).

(iv) Automated news services, data services, or other information services (D317).

(v) Other ADP and telecommunications services (D399).

(2) Maintenance, repair, modification, rebuilding, and installation of equipment (J):

(i) Maintenance, repair, modification, rebuilding, and installation of equipment related to ships (J019).

(ii) Non-nuclear ship repair (J998).

(3) Operation of Government-owned facilities (M):

(i) All facilities operated by the Department of Defense, Department of Energy, and the National Aeronautics and Space Administration.

(ii) Research and development facilities (M180).

(4) Utilities—all classes (S).

(5) Transportation, travel, and relocation services—all classes except V503 travel agent services (V).

(6) All services purchased in support of military forces overseas.

(7) Construction dredging services.

4. Section 25.408 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

25.408 Solicitation provisions and contract clauses.

(a) * * *

(3) The provision at 52.225-20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision, in solicitations containing the clause at 52.225-21. Use the provision with its

Alternate I if the acquisition value is between \$25,000 and \$50,000; and

(4) The clause at 52.225-21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, in solicitations and contracts for supplies where the contracting officer has determined that the acquisition is not subject to the Trade Agreements Act but is subject to NAFTA. Use the clause with its Alternate I if the acquisition value is between \$25,000 and \$50,000.

* * * * *

PART 27—PATENTS, DATA, AND COPYRIGHTS

5. Section 27.208 is added to read as follows:

27.208 Use of patented technology under the North American Free Trade Agreement.

(a) The requirements of this section apply to the use of technology covered by a valid patent when the patent holder is from a country that is a party to the North American Free Trade Agreement (NAFTA).

(b) Article 1709(10) of NAFTA generally requires a user of technology covered by a valid patent to make a reasonable effort to obtain authorization prior to use of the patented technology. However, NAFTA provides that this requirement for authorization may be waived in situations of national emergency or other circumstances of extreme urgency, or public noncommercial use.

(c) Section 6 of Executive Order 12889 of December 27, 1993, waives the requirement to obtain advance authorization for—

(1) An invention used or manufactured by or for the Federal Government, except that the patent owner must be notified whenever the agency or its contractor, without making a patent search, knows or has demonstrable reasonable grounds to know that an invention described in and covered by a valid U.S. patent is or will be used or manufactured without a license; and

(2) The existence of a national emergency or other circumstances of extreme urgency, except that the patent owner must be notified as soon as it is reasonably practicable to do so.

(d) Section 6(c) of Executive Order 12889 provides that the notice to the patent owner does not constitute an admission of infringement of a valid privately owned patent.

(e) When addressing issues regarding compensation for the use of patented technology, Government personnel should be advised that NAFTA uses the

term “adequate remuneration.”

Executive Order 12889 equates “remuneration” to “reasonable and entire compensation” as used in 28 U.S.C. 1498, the statute which gives jurisdiction to the U.S. Court of Federal Claims to hear patent and copyright cases involving infringement by the U.S. Government.

(f) Depending on agency procedures, either the technical/requiring activity or the contracting officer shall ensure compliance with the notice requirements of NAFTA Article 1709(10). A contract award should not be suspended pending notification to the right holder.

(g) When questions arise regarding the notice requirements or other matters relating to this section, the contracting officer should consult with legal counsel.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.212-3 is amended—

(a) By revising the date of the provision to read “(JUN 1996)”;

(b) Redesignating paragraphs (g)(1) through (g)(4) as (g)(1)(i) through (g)(1)(iv) and redesignating paragraph (g) as “(g)(1)”;

removing “(NAFTA)” each time it appears (twice); and removing the word “Certificate”;

(c) Revising newly designated paragraphs (g)(1)(i), (g)(1)(iii), and (g)(1)(iv); and

(d) Adding paragraph (g)(2) to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (JUN 1996)

* * * * *

(g)(1) * * *

(i) 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.” 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 below those excluded end products that are NAFTA country end products. Products that are not identified below will not be deemed NAFTA country end products.

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)

(iv) Offers will be evaluated in accordance with Part 25 of the Federal Acquisition Regulation. In addition, if this solicitation is for supplies for use outside the United States, an evaluation factor of 50 percent will be applied to offers of end products that are not domestic or NAFTA country end products.

(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 below those excluded end products that are Canadian end products. Products that are not identified below will not be deemed Canadian end products.

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)

7. Section 52.212-5 is amended by revising the date of the clause to read “(JUN 1996)”;

paragraph (b)(15) is redesignated as (b)(15)(i); and (b)(15)(ii) is added 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 (Jun 1996)

* * * * *

(b) * * *

____(15)(ii) Alternate I of 52.225-21.

* * * * *

8. Section 52.225-20 is amended in the section heading and provision heading by revising the word “Certificate” to read “Provision”; revising the date of the provision to read “(JUN 1996)”;

revising paragraphs (a), (c), and (d) of the provision; and adding Alternate I to read as follows:

52.225-20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision.

* * * * *

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision (Jun 1996)

(a) 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"). 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 below those excluded end products that are NAFTA country end products. Products that are not identified below will not be deemed NAFTA country end products.

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":

Line item no.	Country of origin

(List as necessary)

(d) Offers will be evaluated in accordance with Part 25 of the Federal Acquisition Regulation. In addition, if this solicitation is for supplies for use outside the United States, an evaluation factor of 50 percent will be applied to offers of end products that are not domestic or NAFTA country end products. (End of provision)

Alternate I (JUN 1996). As prescribed in 25.408(a)(3), substitute the following paragraph (c) for paragraph (c) of the basic provision:

(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 below those excluded end products that are Canadian end products. Products that are not identified below will not be deemed Canadian end products.

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)

9. Section 52.225-21 is amended by revising the date of the clause to read "(JUN 1996)"; in the fourth sentence of paragraph (c) by revising the word

"certifying" to read "specifying"; removing paragraph (d) of the clause; and by adding Alternate I to read as follows:

52.225-21 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

* * * * *

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (Jun 1996)

* * * * *

Alternate I (JUN 1996). As prescribed in 25.408(a)(4), add the following definition to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

Canadian end product means an article that (1) is wholly the growth, product, or manufacture of Canada, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada 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 its supply; provided, that the value of those incidental services does not exceed that of the product itself.

(c) The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate." An offer specifying that a Canadian end product will be supplied requires the Contractor to supply a Canadian end product or, at the Contractor's option, a domestic end product.

10. Section 52.225-22 is added to read as follows:

52.225-22 Balance of Payments Program—Construction Materials—NAFTA.

As prescribed in 25.305(c)(2), insert the following clause:

Balance of Payments Program—Construction Materials—NAFTA (Jun 1996)

(a) *Definitions.* As used in this clause—

Components means those articles, materials, and supplies incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire

alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation shall be treated as domestic.

NAFTA country construction material means a construction material that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

North American Free Trade Agreement (NAFTA) country means Canada and Mexico.

(b) The Balance of Payments Program provides that the Government give preference to domestic construction material.

(c) The Contractor agrees that only domestic construction material or NAFTA country construction material 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 this contract.

(End of clause)

[FR Doc. 96-14529 Filed 6-19-96; 8:45 am]

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48 CFR Part 25

[FAC 90-39; FAR Case 95-030; Item XV]

RIN 9000-AG96

Federal Acquisition Regulation; Caribbean Basin Countries

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 the extension by the U.S. Trade Representative of the date of eligibility under the Trade Agreements