

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.

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(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.

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

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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)

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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

Act for products of Caribbean Basin countries. 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: September 30, 1995.

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 95-030.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 25.402(b) by changing the date "1995" to "1996." Products of Caribbean Basin countries were to be treated as eligible products until September 30, 1995, unless otherwise extended by the U.S. Trade Representative (USTR) by means of a Federal Register notice. On October 3, 1995, the USTR published an extension through September 30, 1996 (60 FR 51822).

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. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart 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 95-030), 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 the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: June 4, 1996.

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

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 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).

§ 25.402 [Amended]

2. Section 25.402 is amended in the first sentence of paragraph (b) by removing "(see 51 FR 6964-6965, February 27, 1986)"; and in the second sentence by revising "1995" to read "1996".

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48 CFR Parts 25 and 52

[FAC 90-39; FAR Case 92-048; Item XVI]

RIN 9000-AF83

**Federal Acquisition Regulation;
Fluctuating Exchange Rates**

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 provide guidance and a solicitation provision regarding evaluation of foreign currency offers. 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: August 19, 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 92-048.

SUPPLEMENTARY INFORMATION:

A. Background

An amendment to FAR Subpart 25.5 and a corresponding solicitation provision were published in the Federal Register as a proposed rule, with a request for comments (see 59 FR 16391, April 6, 1994). Two responses were received. The Council's analysis of those comments resulted in a revision to the rule to delete "commercially available" in the description of the current market exchange rate used in the evaluation of foreign currency offers.

The final rule also adds language at 25.501(b) and 52.225-4 to address evaluation of offers in negotiated acquisitions, when award is based on initial offers received.

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 pertains to contracts entered into and performed overseas and, with rare exceptions, will affect only foreign concerns. No comments were received on the impact of this rule on small entities during the public comment period.

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 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: June 4, 1996.

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

Therefore, 48 CFR Parts 25 and 52 are amended 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 part 25, subpart 25.5, the heading is revised to read as follows:

Subpart 25.5—Use of Foreign Currency

3. Section 25.501 is revised to read as follows:

25.501 Policy.

(a) Unless a specific currency is required by international agreement or by the Trade Agreements Act (see 25.405(d)), contracting officers shall determine whether solicitations for contracts to be entered into and performed outside the United States will require submission of offers either in U.S. currency or in a specified foreign