

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 5, 6, 9, 12, 14, 17, 22, 25,
and 52**

[FAC 2005-07; FAR Case 2004-027; Item IV]

RIN 9000-AK09

**Federal Acquisition Regulation; Free
Trade Agreements—Australia and
Morocco**

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 to convert the interim rule published in the **Federal Register** at 69 FR 77870, December 28, 2004, to a final rule with changes. This rule implemented new Free Trade Agreements with Australia and Morocco as approved by Congress (Public Laws 108-286 and 108-302). These Free Trade Agreements were scheduled to become effective on or after January 1, 2005. However, the Moroccan Free Trade Agreement has not yet been implemented and is therefore removed from this final rule.

The rule also established a table of services excluded from the coverage of the various trade agreements, corrected the threshold for Canadian services, revised the list of Least Developed Countries, revised FAR terminology relating to international trade agreements and the Trade Agreements Act (TAA), and revised the FAR clauses that implement application of the Buy American Act (41 U.S.C. 10a, 10b, 10b-1, and 10c) and trade agreements to construction material.

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Kimberly A. Marshall, Procurement Analyst, at (202) 219-0986. Please cite FAC 2005-07, FAR case 2004-027. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:**A. Background**

The 60-day comment period on the interim rule ended February 28, 2005.

The Councils did not receive any public comments. However, the United States Trade Representative has informed the Councils that the Morocco Free Trade Agreement has not yet entered into force. Although the United States–Morocco Free Trade Agreement (Pub. L. 108-302) was enacted on August 17, 2004, entry into force on or after January 1, 2005, was conditioned on determination by the President that Morocco has taken certain measures necessary to bring it into compliance with certain provisions of the agreement. This determination has not been made, and implementation of the Morocco Free Trade Agreement is removed from this final rule.

This is not a significant regulatory action and, therefore, was not subject to 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.* Although the rule opens up Government procurement to the products of Australia and Caribbean Basin country construction material, this will not have any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions that are set aside for small businesses are exempt. The Councils did not receive any comments relating to the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000-0025, 9000-0130, and 9000-0141.

**List of Subjects in 48 CFR Parts 5, 6, 9,
12, 14, 17, 22, 25, and 52**

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Accordingly, the interim rule amending 48 CFR parts 5, 6, 9, 12, 14, 17, 22, 25, and 52 which was published

at 69 FR 77870 on December 28, 2004, is adopted as a final rule with changes:

■ 1. The authority citation for 48 CFR parts 5, 6, 9, 12, 14, 17, 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION**25.003 [Amended]**

■ 2. Amend section 25.003, in paragraph (2) of the definition “Designated country” and “Free Trade Agreement country” by removing “Morocco,”.

25.400 [Amended]

■ 3. Amend section 25.400 by—
■ a. Adding in paragraph (a)(2)(iii) the word “and” at the end of the paragraph;
■ b. Removing from the end of paragraph (a)(2)(iv) the word “and”; and
■ c. Removing paragraph (a)(2)(v).

25.401 [Amended]

■ 4. Amend section 25.401 in paragraph (b), in the table, in the sixth column, in the heading, by removing the text “and Morocco”.

25.402 [Amended]

■ 5. Amend section 25.402 in paragraph (b), in the table, in the third row, by removing the entry “Morocco FTA” and its corresponding line items “175,000”, “175,000”, and “6,725,000”.

25.1102 [Amended]

■ 6. Amend section 25.1102 by removing from paragraph (c)(3) “, Chilean, or Moroccan” and adding “or Chilean” in its place.

**PART 52—SOLICITATION PROVISIONS
AND CONTRACT CLAUSES****52.212-5 [Amended]**

■ 7. Amend section 52.212-5 by revising the date of the clause to read “(JAN 2006)”; and by removing from paragraphs (b)(24)(i) and (b)(25) “(JAN 2005)” and adding “(JAN 2006)” in its place.

52.225-3 [Amended]

■ 8. Amend section 52.225-3 by revising the date of the clause to read “(JAN 2006)”; and in paragraph (c) by removing “(except the Morocco FTA)”.

52.225-5 [Amended]

■ 9. Amend section 52.225-5 by revising the date of the clause to read “(JAN 2006)”; and in paragraph (a), in the definition “Designated country” by removing from paragraph (2) “Morocco,”.

52.225-11 [Amended]

■ 10. Amend section 52.225-11 by—

- a. Revising the date of the clause to read "(JAN 2006)";
- b. In paragraph (a), in the definition "Designated country" by removing from paragraph (2) "Morocco,"; and
- c. In Alternate I by—
- 1. Revising the date of Alternate I to read "(JAN 2006)";
- 2. Removing from the introductory paragraph "Chilean, or Moroccan" and adding "or Chilean" in its place;
- 3. Removing from the definition "Australian, Chilean, or Moroccan construction material" "Chilean, or Moroccan" and adding "or Chilean" in its place; and in paragraphs (1) and (2) by removing "Chile, or Morocco" and adding "or Chile" in its place; and
- 4. Removing from paragraph (b)(1) "and Australian, Chilean, and Moroccan" and adding "Australian or Chilean" in its place; and by removing from paragraph (b)(2) "Chilean, or Moroccan" and adding "or Chilean" in its place.

52.225-12 [Amended]

- 11. Amend section 52.225-12 by revising the date of Alternate II to read "(JAN 2006)"; and by removing from paragraphs (a), (d)(1) twice, and (d)(3) twice "Chilean, or Moroccan" and adding "or Chilean" in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 12, 19, and 52

[FAC 2005-07; FAR Case 2005-013; Item V]

RIN 9000-AK36

Federal Acquisition Regulation; Deletion of the Very Small Business Pilot Program

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 delete the Very Small Business Pilot Program. Under the pilot program, contracting officers were required to set-aside for very small

business concerns certain acquisitions with an anticipated dollar value between \$2,500 and \$50,000. The Councils removed the FAR provisions because the legislative authority for the program terminated on September 30, 2003.

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAC 2005-07, FAR case 2005-013. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Very Small Business Pilot Program was established by Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103-403). Very small business concern means a small business concern whose headquarters is located within the geographic area served by a designated SBA district and which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million. The purpose of the program was to improve access to Government contract opportunities for concerns that were substantially below the Small Business Administration's size standards by reserving certain acquisitions for competition among such concerns. The Councils are removing the FAR provisions because the legislative authority for the program terminated on September 30, 2003.

This is not a significant regulatory action and, therefore, was not subject to 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 Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

The Very Small Business Pilot Program was established by section 304 of Public Law 103-403, codified as a Note to the Small Business Act, "15 USC 644 Note" and was extended by Section 503 of Public Law 106-554 until September 30, 2003. The program has expired. Therefore, the Federal Acquisition Regulation is amended to reserve Subpart 19.9, Very Small Business Pilot Program, and delete other references to the program throughout the FAR. The changes will have an economic impact on a small number of small entities within the meaning

of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the law required contracting officers to set-aside for very small business concerns acquisitions with an anticipated dollar value exceeding \$2,500 but not greater than \$50,000 if the contracting office is located within the geographical area served by a designated SBA district (for supplies), or in the case of an acquisition for services, the contract will be performed within the geographical area served by a designated SBA district; and there is a reasonable expectation of obtaining offers from two or more responsible very small business concerns in the designated areas.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

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 5, 12, 19, and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 12, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 12, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

5.207 [Amended]

■ 2. Amend section 5.207 by removing paragraph (c)(18) and redesignating paragraph (c)(19) as (c)(18); and by removing from paragraph (d) "very small business set-aside,".

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.303 [Amended]

■ 3. Amend section 12.303 by removing from paragraph (b)(1) "or set-aside for very small business concerns".

PART 19—SMALL BUSINESS PROGRAMS

19.000 [Amended]

■ 4. Amend section 19.000 by removing from paragraph (a)(10) "The Very Small