

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 25 and 52**

[FAC 90-46; FAR Case 91-119; Item VI]
RIN 9000-AG81

**Federal Acquisition Regulation; Buy
American Act—Construction
(Grimberg Decision)**

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 amending the Federal Acquisition Regulation (FAR) to add guidance on pre-award and post-award exceptions to the Buy American Act for construction, and also to provide guidance regarding instances of noncompliance with the Buy American Act. 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.

DATES: Effective May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul 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 90-46, FAR case 91-119.

SUPPLEMENTARY INFORMATION:**A. Background**

A proposed rule was published in the Federal Register at 60 FR 67028, December 27, 1995. The revisions in the final rule are based on the analysis of public comments and further clarification of the rule. The final rule—

- Permits the contracting officer to specify in the solicitation if there is insufficient time to consider requests for determinations under the Buy American Act in advance of receipt of offers;
- Uses more precise terminology for determinations regarding the inapplicability of the Buy American Act;
- Adds guidance regarding exceptions to the Buy American Act that are based on the Trade Agreements Act and North American Free Trade Agreement; and

—Clarifies when supporting information and price comparisons are needed.

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 change the impact of the Buy American Act or alter the exceptions to the Act, but only clarifies the procedures for implementation of the Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act is deemed to apply because the clauses at FAR 52.225-5 and 52.225-15 require offerors/contractors requesting a determination regarding the inapplicability of the Buy American Act to provide the Government with certain information relating to foreign construction material the offeror/contractor proposes to use on the contract. A request for clearance of the information collection requirement previously was submitted to the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*, and approved through February 28, 1999, under OMB Control Number 9000-0141.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: March 7, 1997.

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**25.108 [Amended]**

2. Section 25.108 is amended in paragraph (b) by removing “25.202(a)(3)” and inserting “25.202(a)(2)”.

25.201 [Amended]

3. Section 25.201 is amended in the definition of “Domestic construction material” by removing “25.202(a)(3)” and inserting “25.202(a)(2)”.

4. Subpart 25.2 is amended by revising sections 25.202 through 25.205 and adding sections 25.206 and 25.207 to read as follows:

25.202 Policy.

(a) The Buy American Act requires that only domestic construction materials be used in construction in the United States, except when—

(1) The cost would be unreasonable, i.e., the cost of domestic construction material exceeds the cost of foreign construction material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate (see Executive Order 10582);

(2) The head of the contracting activity or designee determines the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see 25.108);

(3) The agency head determines that application of the restrictions of the Buy American Act to a particular construction material would be impracticable; or

(4) The agency head determines that application of the restrictions of the Buy American Act to a particular construction material would be inconsistent with the public interest. Under this authority, agencies may have agreements with foreign governments that provide blanket exceptions to the Buy American Act (e.g., Trade Agreements Act and North American Free Trade Agreement (NAFTA)).

(b) Unless the contracting officer determines that insufficient time is available, offerors should request determinations regarding the inapplicability of the Buy American Act in time to allow determination before submission of offers.

(c) When it is determined for any of the reasons stated in this section that certain foreign construction materials may be used, the excepted materials shall be listed in the contract. Findings justifying the exception shall be available for public inspection.

(d) For construction contracts with an acquisition value of \$6,500,000 or more, but less than \$7,311,000, see 25.402(a)(3). If the acquisition value is \$7,311,000 or more, see 25.402(a)(1).

25.203 Determinations requested before submission of offers.

(a) Any request for a determination regarding the inapplicability of the Buy American Act made before receipt of offers shall be evaluated based on the information requested in the applicable clause at 52.225-5, Buy American Act—Construction Materials, paragraphs (c) and (d), or 52.225-15, Buy American Act—Construction Materials under Trade Agreements Act and North

American Free Trade Agreement, paragraphs (c) and (d), and may be supplemented by other information readily available to the contracting officer.

(b) If the Government determines before receipt of offers that an exception to the Buy American Act applies (other than a general exception based on the Trade Agreements Act or NAFTA), the excepted material shall be identified by the Government in the clause at 52.225-5(b)(2) or 52.225-15(b)(3).

25.204 Evaluating offers of foreign construction material.

(a) Offerors proposing to use foreign construction material other than that listed by the Government in the applicable clause at 52.225-5(b)(2) or 52.225-15(b)(3) or excepted under the Trade Agreements Act or NAFTA (52.225-15(b)(2)) must provide the information required by paragraphs (c) and (d) of the respective clauses.

(b) Unless agency regulations specify a higher percentage, the Government will add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on the unreasonable cost of domestic construction materials. If the evaluation of offers results in a tie between an offer including foreign construction material excepted on the basis of unreasonable cost, as evaluated, and an offer including solely domestic construction material or other foreign construction material that is excepted by the Government in the solicitation under the clause at 52.225-5(b)(2) or 52.225-15(b)(2) or (3) or subsequently excepted on a basis other than unreasonable cost, award shall be made to the offeror that submitted the latter offer.

(c) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer, if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

(d) If, upon evaluation of an offer, the Government determines that an exception to the Buy American Act applies, and the Government accepts that offer, the excepted material shall be listed in the contract at 52.225-5(b)(2) or 52.225-15(b)(3).

25.205 Postaward determinations.

(a) If a contractor requests a determination regarding the inapplicability of the Buy American Act after contract award, the contractor shall explain why the determination could

not have been requested before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contractor does not submit a satisfactory explanation, the Government need not make a determination regarding the inapplicability of the Buy American Act.

(b) Evaluation of any request for a determination regarding the inapplicability of the Buy American Act made after contract award shall be based on information similar to that required before award by the applicable clause at 52.225-5 (c) and (d) or 52.225-15 (c) and (d) and/or other information readily available to the contracting officer.

(c) If a determination is made after contract award that an exception to the Buy American Act applies, the contract shall be modified to allow use of foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in 25.202(a)(1) or agency procedures.

25.206 Noncompliance.

(a) The contracting officer is responsible for conducting Buy American Act investigations when available information indicates such action is warranted.

(b) Unless fraud is suspected, the contracting officer shall notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action.

(c) If an investigation reveals that a contractor or subcontractor has used foreign construction material without authorization, the contracting officer shall take appropriate action, including one or more of the following:

(1) Process a determination with regard to inapplicability of the Buy American Act in accordance with 25.205.

(2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. Such a determination to retain foreign construction material does not constitute a determination that an exception to the Buy American Act

applies, and this should be so stated in the determination. Further, such a determination to retain foreign construction material does not affect the Government's right to suspend and/or debar a contractor, subcontractor, or supplier for violation of the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report for suspension and/or debarment, including findings and supporting evidence in accordance with subpart 9.4, Debarment, Suspension, and Ineligibility. If the noncompliance appears to be fraudulent, consider referring the matter to other appropriate agency officials, such as the officer responsible for criminal investigation and prosecution.

25.207 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 52.225-5, Buy American Act—Construction Materials, in solicitations and contracts for construction inside the United States, except when the clause at 52.225-15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement, is prescribed.

(b)(1) The contracting officer shall insert the provision at 52.225-12, Notice of Buy American Act Requirement—Construction Materials, in solicitations for construction that contain the clause at 52.225-5, Buy American Act—Construction Materials.

(2) If the contracting officer determines that insufficient time is available to process a determination regarding the inapplicability of the Buy American Act prior to receipt of offers, the contracting officer shall use the provision with its Alternate I.

(c)(1) The contracting officer shall insert the provision at 52.225-13, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements Act and North American Free Trade Agreement, in solicitations for construction that contain the clause at 52.225-15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement.

(2) If the contracting officer determines that insufficient time is available to process a determination regarding the inapplicability of the Buy American Act prior to receipt of offers,

the contracting officer shall use the provision with its Alternate I.

(d)(1) The contracting officer shall insert the clause at 52.225-15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement, in solicitations and contracts for construction inside the United States with an estimated acquisition value of \$7,311,000 or more.

(2) For solicitations and contracts for construction inside the United States with an estimated acquisition value of \$6,500,000 or more, but less than \$7,311,000, the contracting officer shall use the clause with its Alternate I.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.225-5 is amended by revising the introductory paragraph; revising the clause date; revising paragraph (a) introductory text; by removing the phrase “as used in this clause” from the definitions of “Components”, “Construction material” and “Domestic construction material”; by removing from the definition of Domestic construction material “25.202(a)(3)” and inserting “25.202(a)(2)”; by revising paragraph (b) (the undesignated paragraph following paragraph (b) is removed); and adding paragraphs (c) and (d) to read as follows:

52.225-5 Buy American Act—Construction Materials.

As prescribed in 25.207(a), insert the following clause:

Buy American Act—Construction Materials (May 1997)

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

* * * * *

(b)(1) The Buy American Act (41 U.S.C. 10a-10d) requires that only domestic construction material be used in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the excepted construction material or components listed by the Government as follows:

(List applicable accepted materials or indicate “none”)

(3) Other foreign construction material may be added to the list in paragraph (b)(2) of this clause if the Government determines that—

(i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(4) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in paragraph (b)(2) of this clause.

(c) *Request for determination.* (1) Contractors requesting to use foreign

construction material under paragraph (b)(3) of this clause shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If the Government determines after contract award that an exception to the Buy American Act applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(3)(i) of this clause.

(3) If the Government does not determine that an exception to the Buy American Act applies, the use of that particular foreign construction material will be a failure to comply with the Act.

(d) For evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material
Domestic construction material
Item 2:			
Foreign construction material
Domestic construction material

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

¹ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

(End of clause)

6. Sections 52.225-12 and 52.225-13 are added to read as follows:

52.225-12 Notice of Buy American Act Requirement—Construction Materials.

As prescribed in 25.207(b), insert the following provision:

Notice of Buy American Act Requirement—Construction Materials (May 1997)

(a) Offerors are required to comply with the requirements of Federal Acquisition Regulation (FAR) clause 52.225-5, Buy American Act Construction Materials, of this solicitation. The terms “construction material” and “domestic construction material,” as used in this provision, have the meanings set forth in FAR clause 52.225-5.

(b) Offerors should request a determination regarding the inapplicability of the Buy

American Act in time to allow determination before submission of offers. For evaluation of a request for a determination regarding the inapplicability of the requirements of the Buy American Act prior to the time set for receipt of offers, the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-5 shall be included in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act prior to submission of its offer, or has not received

a response to a request made prior to submission of its offer, the information and supporting data shall be included in the offer.

(c) *Evaluation of offers.* (1) For evaluation of offers, (unless agency regulations specify a higher percentage) the Government will add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on claimed unreasonable cost of domestic construction materials in accordance with paragraph (b)(3)(i) of FAR clause 52.225-5.

(2) If the evaluation of offers results in a tie between an offer including such foreign construction material excepted on the basis of unreasonable cost, as evaluated, and an offer including solely domestic construction material or other foreign construction material listed in the solicitation at paragraph (b)(2) of FAR clause 52.225-5, or subsequently excepted in accordance with paragraphs (b)(3) (ii) or (iii) of FAR clause 52.225-5, award shall be made to the offeror that submitted the latter offer.

(d) *Alternate offers.* (1) When an offer includes foreign construction material not listed by the Government in the solicitation at paragraph (b)(2) of FAR clause 52.225-5, offerors also may submit alternate offers based on use of equivalent domestic construction material.

(2) If alternate offers are submitted, a separate Standard Form 1442 shall be submitted for each alternate offer, and a separate price comparison table, prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-5, shall be submitted for each offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception to apply.

(3) If the Government determines that a particular exception requested under paragraph (c) of FAR clause 52.225-5 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material.

(i) In sealed bid procurements, any offer based on use of that particular foreign construction material shall be rejected as nonresponsive.

(ii) In negotiated procurements, any offer based on use of that particular foreign construction material may not be accepted unless revised during negotiations.
(End of provision)

Alternate I. (MAY 1997) As prescribed in 25.207(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) An offeror requesting a determination regarding the inapplicability of the Buy American Act shall submit such request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-5.

52.225-13 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements Act and North American Free Trade Agreement.

As prescribed in 25.207(c)(1), insert the following provision:

Notice of Buy American Act Requirement—Construction Materials under Trade Agreements Act and North American Free Trade Agreement (May 1997)

(a) Offerors are required to comply with the requirements of Federal Acquisition Regulation (FAR) clause 52.225-15, Buy American Act—Construction Materials Under Trade Agreements Act and North American Free Trade Agreement, of this solicitation. The terms defined in FAR clause 52.225-15 have the same meaning in this provision.

(b) Offerors should request a determination regarding the inapplicability of the Buy American Act in time to allow determination before submission of offers. For evaluation of a request for a determination regarding the inapplicability of the requirements of the Buy American Act prior to the time set for receipt of offers, the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-15 shall be included in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act prior to submission of its offer, or has not received a response to a request made prior to submission of its offer, the information and supporting data shall be included in the offer.

(c) *Evaluation of offers.* (1) For evaluation of offers, (unless agency regulations specify a higher percentage) the Government will add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on claimed unreasonable cost of domestic construction materials in accordance with paragraph (b)(4)(i) of FAR clause 52.225-15.

(2) If the evaluation of offers results in a tie between an offer including such foreign construction material excepted on the basis of unreasonable cost, as evaluated, and an offer including solely domestic construction material or other foreign construction material, listed in the solicitation at paragraph (b)(3) of FAR clause 52.225-15, or subsequently excepted in accordance with paragraphs (b)(4)(ii) or (iii) of FAR clause 52.225-15, award shall be made to the offeror that submitted the latter offer.

(d) *Alternate offers.* (1) When an offer includes foreign construction material not listed by the Government in the solicitation at paragraph (b)(3) of FAR clause 52.225-15, offerors also may submit alternate offers based on use of equivalent domestic construction material.

(2) If alternate offers are submitted, a separate Standard Form 1442 shall be submitted for each alternate offer, and a separate price comparison table, prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-15, shall be submitted for each offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception to apply.

(3) If the Government determines that a particular exception requested under paragraph (c) of FAR clause 52.225-15 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material.

(i) In sealed bid procurements, any offer based on use of that particular foreign construction material shall be rejected as nonresponsive.

(ii) In negotiated procurements, any offer based on use of that particular foreign construction material may not be accepted unless revised during negotiations.

(End of provision)

Alternate I (MAY 1997). As prescribed in 25.207(c)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) An offeror requesting a determination regarding the inapplicability of the Buy American Act shall submit such request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-15.

7. Section 52.225-15 is amended by revising the introductory paragraph, and the clause date; in the definition of "Domestic construction material" by removing "25.202(a)(3)" and inserting "25.202(a)(2)"; by revising paragraphs (b) and (c); and by adding paragraph (d) to read as follows:

52.225-15 Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement.

As prescribed in 25.207(d), insert the following clause:

Buy American Act—Construction Materials Under Trade Agreements Act and North American Free Trade Agreement (May 1997)

* * * * *

(b)(1) The Buy American Act (41 U.S.C. 10a—10d) requires that only domestic construction material be used in performing this contract, except as provided in paragraphs (b)(2), (b)(3), and (b)(4) of this clause.

(2) The Trade Agreements Act and the North American Free Trade Agreement (NAFTA) provide that designated country and NAFTA country construction materials are exempted from application of the Buy American Act.

(3) The requirement in paragraph (b)(1) of this clause does not apply to the excepted construction material or components listed by the Government as follows:

(List applicable accepted materials or indicate "none")

(4) Other foreign construction material may be added to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material

exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(5) The Contractor agrees that only domestic construction materials, NAFTA country construction materials, or designated country construction materials will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in paragraph (b)(3) of this clause.

(c) *Request for determination.* (1) Contractors requesting to use foreign

construction material under paragraph (b)(4) of this clause shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(4) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If the Government determines after contract award that an exception to the Buy American Act applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(4)(i) of this clause.

(3) If the Government does not determine that an exception to the Buy American Act applies, the use of that particular foreign construction material will be a failure to comply with the Act.

(d) For evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material
Domestic construction material
Item 2:			
Foreign construction material
Domestic construction material

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

¹ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

(End of clause)

Alternate I (MAY 1997). As prescribed in 25.207(d)(2), substitute the following paragraphs (b)(2) and (b)(5) for paragraphs (b)(2) and (b)(5) of the basic clause:

(b)(2) The North American Free Trade Agreement (NAFTA) provides that NAFTA construction materials are exempted from application of the Buy American Act.

(b)(5) The Contractor agrees that only domestic construction materials or NAFTA country construction materials 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 paragraph (b)(3) of this clause.

52.225-22 [Amended]

8. Section 52.225-22 is amended by revising the clause date to read "(MAY 1997)"; and in the definition of "Domestic construction material" by removing "25.202(a)(3)" and inserting "25.202(a)(2)".

[FR Doc. 97-6315 Filed 3-14-97; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 26 and 52

[FAC 90-46; FAR Case 95-306; Item VII]
RIN 9000-AH02

Federal Acquisition Regulation; Collection of Historically Black Colleges and Universities/Minority Institutions Award Data

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 amending the Federal Acquisition Regulation (FAR) to implement Executive Order 12928, which requires agencies to provide periodic reporting on the progress made in award of contracts to Historically Black Colleges and Universities and

Minority Institutions. 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.

DATES: Effective May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 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 90-46, FAR case 95-306.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 26 and 52 to implement Executive Order 12928, which states that agencies will provide periodic reporting on their progress made in awards to Historically Black Colleges and Universities and Minority Institutions. The rule contains a new FAR subpart and solicitation provision.

A proposed rule was published in the Federal Register at 61 FR 31792, June 20, 1996. Five sources submitted comments in response to the proposed