

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 4, 25 and 52**

[FAC 2005–61; FAR Case 2012–004; Item  
I; Docket 2012–0004, Sequence 1]

RIN 9000–AM18

**Federal Acquisition Regulation; United  
States-Korea Free Trade Agreement**

**AGENCY:** Department of Defense (DoD),  
General Services Administration (GSA),  
and National Aeronautics and Space  
Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are  
adopting as final, without change, an  
interim rule amending the Federal  
Acquisition Regulation (FAR) to  
implement the United States-Korea Free  
Trade Agreement. The Republic of  
Korea is already party to the World  
Trade Organization Government  
Procurement Agreement, but this trade  
agreement implements a lower  
procurement threshold.

**DATES:** *Effective Date:* September 13,  
2012.

**FOR FURTHER INFORMATION CONTACT:** Ms.  
Cecelia L. Davis, Procurement Analyst,  
at 202–219–0202 for clarification of  
content. For information pertaining to  
status or publication schedules, contact  
the Regulatory Secretariat at 202–501–  
4755. Please cite FAC 2005–61, FAR  
Case 2012–004.

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD, GSA, and NASA published an  
interim rule in the **Federal Register** on  
March 7, 2012 (77 FR 13952), to  
implement the Free Trade Agreement  
with the Republic of Korea, which took  
effect on March 15, 2012. The comment  
period closed on May 7, 2012. Three  
respondents submitted comments on the  
interim rule.

The interim rule added the Republic  
of Korea to the definition of “Free Trade  
Agreement country” in multiple  
locations in the FAR. The Republic of  
Korea was already listed as a designated  
country because it is party to the WTO  
GPA. The excluded services for the  
Korea FTA are the same as for the WTO  
GPA. By implementation of this Korea  
FTA, eligible goods and services from  
Korea are now covered when valued at  
or above \$100,000, rather than at or  
above the WTO GPA threshold of

\$202,000. The threshold for the Korea  
FTA for construction is the same as the  
threshold for the WTO GPA for  
construction.

**II. Discussion and Analysis**

The Civilian Agency Acquisition  
Council and the Defense Acquisition  
Regulations Council (the Councils)  
reviewed the comments in the  
development of the final rule. A  
discussion of the comments is provided  
as follows:

**A. Summary of Significant Changes**

The Councils have adopted the  
interim rule as final without change.

**B. Analysis of Public Comments****1. Impact on U.S. Businesses and  
Economy**

*Comment:* One respondent expressed  
agreement that the United States has the  
responsibility to do business with Free  
Trade Agreement countries, but was  
concerned that lowering the trade  
agreements threshold from \$202,000 to  
\$100,000 for goods and services from  
the Republic of Korea will damage the  
small American business owners’  
chances to compete, because of lower  
minimum wage in Korea. The  
respondent was also concerned that  
lowering the threshold will increase the  
national deficit. This respondent also  
stated that the rule will benefit U.S. big  
business owners to the detriment of  
small American business owners.

*Response:* DoD, GSA, and NASA  
issued this final rule because it  
implements a statute (United States–  
Korea Free Trade Agreement  
Implementation Act, Pub. L. 112–41,  
enacted on October 21, 2011). The  
Councils do not have discretion to set  
trade agreement thresholds.

However, as discussed in the section  
on Regulatory Flexibility, the lowering  
of the threshold from \$202,000 to  
\$100,000 only applies to the supplies  
and services covered by the Korea Free  
Trade Agreement. For DoD, it only  
covers the non-defense items listed at  
Defense Federal Acquisition Regulations  
System (DFARS) 225.401–70.

Acquisitions that are set aside or  
provide other form of preference for  
small businesses are exempt from the  
Korea Free Trade Agreement. FAR  
19.502–2 states that acquisitions that do  
not exceed \$150,000 (except as  
described in paragraph (1) of the  
definition of “simplified acquisition  
threshold” at 2.101) are automatically  
reserved exclusively for small business  
concerns, unless the contracting officer  
determines that there is not a reasonable  
expectation of obtaining offers from two

or more responsible small business  
concerns.

**2. Implementation in Contracts for  
Services**

*Comment:* One respondent questioned  
how agencies will implement the Korea  
Free Trade Agreement for services.

*Response:* This question is not unique  
to the Korea Free Trade Agreement. The  
FAR does not provide provisions or  
clauses for the specific implementation  
of any trade agreements. The FAR  
provisions and clauses address only end  
products, because the provisions and  
clauses are necessary to—

- Waive the Buy American Act,  
which only applies to supplies; and
- Implement the purchase restriction  
at 25.403(c) for acquisitions that exceed  
the World Trade Organization  
Government Procurement Agreement  
(WTO GPA) threshold of \$202,000.  
Below that threshold, there is no  
purchase restriction on acquisition of  
services from nondesignated countries.

The requirements of the Free Trade  
Agreements relate primarily to  
acquisition procedures that are already  
specified in the FAR, *e.g.*, FAR 5.203,  
Publicizing and response time; FAR  
5.207, Preparation and transmittal of  
synopses; and FAR 15.503, Notifications  
to unsuccessful offerors (see FAR 25.408  
for other applicable procedures).

**3. Procuring Entities of the Central Level  
of the U.S. Government**

*Comment:* One respondent requested  
that the final rule should include the list  
of the entities of the U.S. central level  
of Government, which have certain  
obligations with respect to Government  
procurement of goods and services.

*Response:* The FAR has not included  
the list of Federal entities subject to any  
other free trade agreement or the WTO  
GPA. Therefore, the Councils do not  
consider inclusion of such a list in the  
FAR for the Korea Free Trade  
Agreement to be necessary or  
appropriate.

**4. Past Performance**

*Comment:* One respondent expressed  
appreciation of the specific reference to  
Article 17.5.2(b) of the Korea Free Trade  
Agreement in the **Federal Register**  
preamble to the interim rule. Article  
17.5.2.(b) stipulates that an agency shall  
not impose a condition that, in order for  
an offeror to be allowed to submit an  
offer or be awarded a contract, the  
offeror has been previously awarded one  
or more contracts by an agency of the  
United States Government or that the  
offeror has prior work experience in the  
United States. The respondent suggested  
that Office of Management and Budget

guidance on “best practices for collecting and using current and past performance information” be updated by adding best practices related to Articles 17.5.2(b) of the Korea Free Trade Agreement.

*Response:* Changes to the Office of Management and Budget guidance are outside the scope of this rule. The Councils note, however, that FAR 15.305(a)(2)(iv) already requires that, in the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### IV. 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 Korea is already a designated country under the WTO GPA. Although the rule opens up Government procurement to the goods and services of Korea at or above the threshold of \$100,000, 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 or provide other form of preference for small businesses are exempt from coverage of the agreement. FAR 19.502–2 states that acquisitions that do not exceed \$150,000 (except as described in paragraph (1) of the definition of “simplified acquisition threshold” at 2.101) are automatically reserved exclusively for small business concerns, unless the contracting officer

determines that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns.

### V. Paperwork Reduction Act

The rule affects the certification and information collection requirements in the provisions at FAR 52.212–3 and 52.225–4, 52.225–6, and 52.225–11 currently approved under the Office of Management and Budget Control Numbers 9000–0136, 9000–0130, 9000–0025, and 9000–0141 respectively, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because it is just a question of which category offered goods from the Republic of Korea would be listed under.

### List of Subjects in 48 CFR Parts 4, 25, and 52

Government procurement.

Dated: September 7, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

### Interim Rule Adopted as Final Without Changes

■ Accordingly, the interim rule amending 48 CFR parts 4, 25, and 52, which was published in the **Federal Register** at 77 FR 13952 on March 7, 2012, is adopted as a final rule without changes.

[FR Doc. 2012–22574 Filed 9–12–12; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 6

[FAC 2005–61; FAR Case 2012–026; Item II; Docket 2012–0026, Sequence 1]

**RIN 9000–AM35**

### Federal Acquisition Regulation; Delete Outdated FAR Reference to the DoD Industrial Preparedness Program

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the

Federal Acquisition Regulation (FAR) to delete references to the obsolete “DoD Industrial Preparedness Program”.

**DATES:** *Effective Date:* October 15, 2012

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Lague, Procurement Analyst, at 202–694–8149, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–61, FAR Case 2012–026.

### SUPPLEMENTARY INFORMATION:

#### I. Background

DoD, GSA, and NASA are issuing a final rule to delete references to the obsolete “DoD Industrial Preparedness Program” at FAR 6.302–3(b)(iv).

In 1992, DoD rescinded the following regulations for the DoD’s Industrial Preparedness Program: DoD Directive 4005.1, Industrial Preparedness Program; and DoD Instruction 4005.3, Industrial Preparedness Planning. References to the program have already been removed from the Defense Federal Acquisition Regulation Supplement (DFARS) (71 FR 39004, July 11, 2006).

#### II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it only deletes references to an obsolete program; which has neither a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure or form, nor has a significant cost or administrative impact on contractors or offerors.

### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,