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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005-19; FAR Case 2006-028; Item
VIII; Docket 2007-0001, Sequence 01]

RIN 9000-AK77

Federal Acquisition Regulation; FAR Case 2006-028, New Designated Countries—Bulgaria, Dominican Republic, and Romania

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

ACTION: Interim rule with request for
comments.

SUMMARY: The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council
(Councils) have agreed on an interim
rule amending the Federal Acquisition
Regulation (FAR) to implement the
Dominican Republic—Central
America—United States Free Trade
Agreement with respect to the
Dominican Republic. The rule also adds
Bulgaria and Romania to the list of
World Trade Organization Government
Procurement Agreement countries.

DATES: *Effective Date:* August 17, 2007.

Comment Date: Interested parties
should submit written comments to the
FAR Secretariat on or before October 16,
2007 to be considered in the
formulation of a final rule.

ADDRESSES: Submit comments
identified by FAC 2005-19, FAR case
2006-028, by any of the following
methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting “Federal Acquisition Regulation” as the agency of choice. At the “Keyword” prompt, type in the FAR case number (for example, FAR case 2006-028) and click on the “Submit” button. Please include your name and company name (if any) inside the document.

You may also search for any document by clicking on the “Advanced search/document search” tab at the top of the screen, selecting from the agency field “Federal Acquisition Regulation”,

and typing the FAR case number in the keyword field. Select the “Submit” button.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-19, FAR case 2006-028, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925 for clarification of content. Please cite FAC 2005-19, FAR case 2006-028. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Part 25 and the corresponding clauses in Part 52 to implement the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR) with respect to the Dominican Republic. Congress approved this trade agreement in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Public Law 109-53). This trade agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials from the Dominican Republic and specifies procurement procedures designed to ensure fairness in the acquisition of supplies and services.

This interim rule adds the Dominican Republic to the definition of “Free Trade Agreement country.” The rule also deletes the Dominican Republic from the definition of “Caribbean Basin country” because, in accordance with Section 201(a)(3) of Pub. L. 109-53, when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act.

The Councils changed the heading for excluded service on line 6 of the table at 25.401(b) to read “Transportation, travel, and relocation services. . .” as being reflective of the wording of the majority of the Free Trade Agreements, including the CAFTA-DR.

The Dominican Republic has the same thresholds as the other CAFTA-DR

countries (\$64,786 for supply and service contracts, \$7,407,000 for construction contracts).

This rule also adds Bulgaria and Romania to the list of World Trade Organization Government Procurement Agreement countries in wherever it appears, whether as a separate definition, part of the definition of designated countries, or as part of the list of countries exempt from the prohibition of acquisition of products produced by forced or indentured child labor (22.1503, 25.003, 52.222-19, 52.225-5, and 52.225-11).

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 interim rule is 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.* Although the rule opens up Government procurement to the goods and services of Bulgaria, the Dominican Republic, and Romania, the Councils do not anticipate 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. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 22, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005-19, FAR case 2006-028), in correspondence.

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, 9000-0136, and 9000-0141 respectively. The interim rule affects the certification and information collection requirements in the provisions at FAR 52.212-3, 52.225-4, 52.225-6, and 52.225-11.

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 urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the CAFTA-DR took effect with respect to the Dominican Republic on March 1, 2007. Bulgaria and Romania became parties to the WTO GPA on January 1, 2007.

However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 in paragraph (b)(4) by adding “Bulgaria,” and “Romania,” in alphabetical order.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

- 3. Amend section 25.003 by—
- a. Removing from the definition “Caribbean Basin country,” “Dominican Republic,”;
- b. Amending the definition “Designated country” by—
- 1. Adding to paragraph (1) “Bulgaria,” and “Romania,” in alphabetical order;
- 2. Adding to paragraph (2) “Dominican Republic,” in alphabetical order; and
- 3. Removing from paragraph (4) “Dominican Republic,”;
- c. Amending the definition “Free Trade Agreement country,” by adding “Dominican Republic,” in alphabetical order; and
- d. Amending the definition “World Trade Organization Government Procurement Agreement (WTO GPA) country,” by adding “Bulgaria,” and “Romania,” in alphabetical order.

25.402 [Amended]

■ 4. Amend section 25.402(b), in the table, by adding after “El Salvador,” the entry “Dominican Republic,”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–3 by revising the date of the clause and the last sentence of paragraph (g)(1)(i) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS
“(AUG 2007)”

* * * * *

(g)(1) * * *

(i) * * * The terms “Bahrainian or Moroccan end product,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

* * * * *

52.212–5 [Amended]

- 6. Amend section 52.212–5 by—
- a. Revising the date of clause to read “(AUG 2007)”;
- b. Removing from paragraph (b)(17) “(JAN 2006)” and adding “(AUG 2007)” in its place; and
- c. Removing from paragraphs (b)(27)(i) and (b)(28) “(NOV 2006)” and adding “(AUG 2007)” in its place.

52.222–19 [Amended]

- 7. Amend section 52.222–19 by revising the date of clause to read “(AUG 2007)”;
- a. Adding to paragraph (a)(4) by adding “Bulgaria,” and “Romania,” in alphabetical order.
- 8. Amend section 52.225–3 by—
- a. Revising the date of clause;
- b. Revising the introductory text of the definition “Bahrainian end product”, and adding to paragraphs (1) and (2) “or Morocco” after Bahrain;
- c. Amending the definition “Free Trade Agreement country” by adding “Dominican Republic,” in alphabetical order;
- d. Removing the definition “Moroccan end product”; and
- e. Removing from paragraph (c) “Morocco FTA” and adding “Morocco FTAs” in its place.

The revised text reads as follows:

52.225–3 Buy American Act—Free Trade Agreements—Israeli Trade Act.

* * * * *

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT
“(AUG 2007)”

* * * * *

Bahrainian or Moroccan end product
means an article that—

* * * * *

52.225–4 [Amended]

■ 9. Amend section 52.225–4 by revising the date of clause to read “(AUG 2007)”;
- and adding to paragraph (a) “or Moroccan” after “Bahrainian” and by removing the term “Moroccan end product,”.

52.225–5 [Amended]

- 10. Amend section 52.225–5 by—
- a. Revising the date of clause to read “(AUG 2007)”;
- and
- b. Amending, in paragraph (a), the definition “Designated country” by—
- 1. Adding to paragraph (1) “Bulgaria,” and “Romania,” in alphabetical order;
- 2. Adding to paragraph (2) “Dominican Republic,” in alphabetical order; and
- 3. Removing from paragraph (4) “Dominican Republic,”.
- 11. Amend section 52.225–11 by—
- a. Revising the date of clause;
- b. Amending the definition “Designated country” by—
- 1. Adding to paragraph (1) “Bulgaria,” and “Romania,” in alphabetical order;
- 2. Adding to paragraph (2) “Dominican Republic,” in alphabetical order; and
- 3. Removing from paragraph (4) “Dominican Republic,”;
- and
- c. In Alternate I by revising the introductory text and the definition “Bahrainian construction material”; and by removing the definition “Mexican construction material”.

The revised text reads as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
“(AUG 2007)”

* * * * *

Alternate I “(AUG 2007)”. As prescribed in 25.1102(c)(3), add the following definition of “Bahrainian or Mexican construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Bahrainian or Mexican construction material means a construction material that—

- (1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct

from the materials from which it was transformed.

* * * * *

■ 12. Amend section 52.225–12 by revising the introductory text of Alternate II to read as follows:

52.225–12 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements.

* * * * *

Alternate II “(AUG 2007)”. As prescribed in 25.1102(d)(3), add the definition of “Bahrainian or Mexican construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

* * * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 23

[FAC 2005–19; FAR Case 2006–025; Item IX; Docket 2007–0001, Sequence 3]

RIN 9000–AK76

Federal Acquisition Regulation; FAR Case 2006–025, Online Representations and Certifications Application Review

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to revise the prescription for use of clauses for the use of EPA-designated products and toxic chemical release reporting.

DATES: Effective Date: August 17, 2007.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before October 16, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–19, FAR case 2006–025, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper

document types and selecting “Federal Acquisition Regulation” as the agency of choice. At the “Keyword” prompt, type in the FAR case number (for example, FAR Case 2006–025) and click on the “Submit” button. Please include your name and company name (if any) inside the document.

You may also search for any document by clicking on the “Advanced search/document search” tab at the top of the screen, selecting from the agency field “Federal Acquisition Regulation”, and typing the FAR case number in the keyword field. Select the “Submit” button.

- Fax: 202–501–4067.

- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–19, FAR case 2006–025, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–19, FAR case 2006–025. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Subpart 4.12, Annual Representations and Certifications, prescribes policies and procedures for prospective offerors to submit annual representations via the Online Representations and Certifications Application (ORCA). ORCA, located at <http://orca.bpn.gov>, eliminates the administrative burden of submitting the same information to various contracting offices and establishes a common source for the Government to obtain the information. FAR 4.1201 requires prospective contractors to complete annual representations and certifications in ORCA (and update them as necessary, but at least annually) in conjunction with their required registration in the Central Contractor Registration (CCR) database.

FAR 4.1104 requires (with few exceptions as listed at FAR 4.1102) the use of FAR clause 52.204–7, Central Contractor Registration, which requires the contractor to register in CCR. FAR 4.1202 lists twenty-six representations and certifications that are included in

ORCA and are therefore not to be included in solicitations that include the clause at 52.204–7, Central Contractor Registration.

Of the twenty-six representations and certifications, the prescriptions for use of two associated clauses, (1) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products, and (2) 52.223–14, Toxic Chemical Release Reporting, were determined to be problematic. The prescriptions for use of the clauses were dependent upon the associated provisions at 52.223–4, Recovered Material Certification, and 52.223–13, Certification of Toxic Chemical Release Reporting, being included in the solicitation. In instances where CCR is required, the annual certification in ORCA applies, and therefore neither provision will be included in the solicitation. Therefore, when applicable to the resultant contract, the Government may fail to include the associated clause because the provision was not included in the solicitation. Failure to include the clause may preclude receipt of information or certification required by statute.

This interim rule amends FAR 23.406 and 23.906, both titled Solicitation provision and contract clause, to revise the prescriptions for the use of 52.223–9 and 52.223–14 to provide for use under the same circumstances as the prescription for use of their associated provisions. These revisions ensure compliance with the statutory requirements of 40 CFR part 247 and 42 U.S.C. 11023.

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 interim rule is 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 the rule revises language that the Office of Management and Budget has already approved for obtaining representations and certifications under OMB Control Numbers 9000–0134 and 9000–0139 for compliance with Section 6002 of the Resource Conservation and Recovery Act and the requirements of Executive Order 12969, Emergency Planning and Community Right-to-Know Act of 1986. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities