

(b)(1)” and adding “paragraph (a)(1)” in its place.

■ The revised text reads as follows:

8.602 Policy.

(a) In accordance with 10 U.S.C. 2410n and Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447), and except as provided in paragraph (b) of this section, agencies shall—

* * * * *

(b) The procedures in paragraph (a) of this section do not apply if an exception in 8.605(b) through (g) applies.

* * * * *

8.605 [Amended]

■ 3. Amend section 8.605 by removing from paragraph (a)(2) “8.602(b)(4)” and adding “8.602(a)(4)” in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.504 [Amended]

■ 4. Amend section 19.504 by removing “8.602(b)(4)” and adding “8.602(a)(4)” in its place.

[FR Doc. 05–24551 Filed 12–30–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 2005–07; FAR Case 2005–022; Item VII]

RIN 9000–AK34

Federal Acquisition Regulation; Exception from Buy American Act for Commercial Information Technology

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 to implement Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). Section 517 authorizes exemption from the Buy American Act for acquisitions of information technology that are commercial items.

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

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before March 6, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–07, FAR case 2005–022, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

- E-mail: farcase.2005-022@gsa.gov. Include FAC 2005–07, FAR case 2005–022, in the subject line of the message.

- 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 2005–07, FAR case 2005–022, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Kimberly Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–07, FAR case 2005–022.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR 25.103 and FAR Subpart 25.11 to implement Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). Section 517 authorizes exemption from the Buy American Act for acquisitions of information technology that are commercial items. This applies only to the use of FY 2005 funds.

This same exemption appeared last year in section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004 (Pub. L. 108–199). The FY 04 exemption was implemented through deviations by the individual agencies.

The interim rule is based on the estimation that the exemption of commercial information technology is likely to continue. If the exception does not appear in a future appropriations act, a prompt change to the FAR will be made to limit applicability of the

exemption to the fiscal years to which it applies.

The effect of this exemption is that the following clauses are no longer applicable in acquisition of commercial information technology:

- FAR 52.225–1, Buy American Act—Supplies.

- FAR 52.225–2, Buy American Act Certificate.

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

- FAR 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

This is because the Buy American Act no longer applies; and the Free Trade Agreement non-discriminatory provisions are no longer necessary, since all products now are treated without the restrictions of the Buy American Act.

The Trade Agreements provision and clause at FAR 52.225–5 and FAR 52.225–6 are still necessary when the Trade Agreements Act applies (acquisitions above \$175,000). The Trade Agreements provision and clause already waive applicability of the Buy American Act for eligible products, and are needed to implement the restrictions on procurement of noneligible end products. Section 535 and subsequent similar sections waived only the Buy American Act, not all restrictions on the purchase of foreign information technology.

“Information technology” and “Commercial item” are already defined in FAR Part 2.

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 changes may 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 increases the exceptions to the Buy American Act to include the acquisitions of information technology that are commercial items. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The objective of the interim rule is to add the exemption to the Buy American Act for acquisitions of commercial information technology. As a result of the additional exception, the Buy American Act will no longer apply to those acquisitions and the Free Trade Agreement non-discriminatory

provisions are no longer necessary, since all products will be treated without the restrictions of the Buy American Act. The interim rule applies to all offerors responding to solicitations for commercial information technology where the Buy American Act previously applied (generally, acquisitions between \$2,500 and \$175,000). This rule does not apply to the Department of Defense, which uses DFARS clauses to implement the Buy American Act. This exception will allow small entities to compete without meeting the Buy American Act domestic end product requirements.

- It is anticipated that small business concerns will continue to receive the same number of awards in the range of \$2,500 to \$100,000, because these awards are generally set-aside for small business concerns.
- It is also expected that small business concerns will continue to receive awards in the range of \$100,000 to \$175,000, but in this range they will face competition from foreign end products.
- This rule will not have an effect on small businesses affected by the “non-manufacturer rule” which means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern. If there is a small business set-aside, and there is no SBA waiver of the nonmanufacturer rule, then FAR 52.219-6(c) and/or FAR 52.219-18(d) require that a domestic product must be furnished. In this case, the rule will have no effect on small businesses because the nonmanufacturer rule is not changed.

- If SBA did waive the nonmanufacturer rule, then there is no requirement to purchase a domestic product but an evaluation preference would apply.
- The rule could have an impact on small businesses when there is no small business set-aside because small businesses may lose the evaluation preference for acquisitions between \$25,000 and \$175,000.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. We invite comments from small business concerns and other interested parties on this issue. The Councils will also consider comments from small entities concerning the affected FAR Part 25 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 2005-07, FAR case 2005-022), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply because the changes to the FAR will slightly reduce the information collection requirements currently approved by the Office of Management and Budget OMB Clearances 9000-0024 and 9000-0130.

We estimate a reduction of approximately 5 percent (300 hours) for OMB Clearance 9000-0024 and a reduction of 50 hours to 9000-0130.

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 to implement the changes resulting from the enactment of Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447), effective December 8, 2004. 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 Part 25

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

- Therefore, DoD, GSA, and NASA amend 48 CFR part 25 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. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

- 2. Amend section 25.103 by adding paragraph (e) to read as follows:

25.103 Exceptions.

* * * * *

(e) *Information technology that is a commercial item.* The restriction on purchasing foreign end products does not apply to the acquisition of information technology that is a commercial item, when using fiscal year 2004 or subsequent fiscal year funds (Section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

- 3. Amend section 25.1101 by—
- a. Revising paragraph (a)(1)(ii);
- b. Amending paragraph (b)(1)(i)(A) by removing “and” from the end of the sentence;
- c. Redesignating paragraph (b)(1)(i)(B) as (b)(1)(i)(C) and adding a new paragraph (b)(1)(i)(B) to read as follows:

25.1101 Acquisition of supplies.

* * * * *

(a)(1) * * *

(ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (e.g., nonavailability, public interest, or information technology that is a commercial item); or

* * * * *

(b)(1)(i) * * *

(B) The acquisition is not for information technology that is a commercial item, using fiscal year 2004 or subsequent fiscal year funds; and

* * * * *

[FR Doc. 05-24552 Filed 12-30-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-07; FAR Case 2005-026; Item VIII]

RIN 9000-AK37

Federal Acquisition Regulation; Removal of Sanctions Against Libya

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 implement Executive Order 13357, which removed sanctions against Libya.

DATES: *Effective Date:* February 2, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Kimberly Marshall, Procurement Analyst, at (202) 219-0986. Please cite FAC 2005-07, FAR case 2005-026. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 25.7, Prohibited Sources, and the clause at 52.225-13, Restrictions on Certain Foreign Purchases, by removing Libya from the list of countries sanctioned by