DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–13; FAR Case 2005–030; Item V;Docket 2006–0020, Sequence 15]

RIN 9000–AK40

Federal Acquisition Regulation; FAR Case 2005–030, Trade Agreements—Thresholds

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 adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the increased thresholds for the World Trade Organization Government Procurement Agreement and Free Trade Agreements.

DATES: *Effective Date*: September 28, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2005–13, FAR case 2005–030. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published an interim rule in the **Federal Register** at 71 FR 864, January 5, 2006, to implement the increased thresholds for the World Trade Organization Government Procurement Agreement and Free Trade Agreements. Every two years, the trade agreements thresholds are escalated according to a pre-determined formula set forth in the agreements. The United States Trade Representative published the new thresholds in the **Federal Register** at 70 FR 73510 to 73511, December 12, 2005. No comments were received by the close of the public comment period on March 6, 2006, therefore, the Councils agreed to convert the interim rule to a 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.*, because the threshold changes are in line with inflation and only maintain the status quo.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply, because the final 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 currently approved under OMB clearances 9000–0136, 9000–0130, 9000–0025, and 9000–0141 respectively. There is, however, no change to these clearances because the threshold changes are due to inflation and only maintain the status quo. As a result, these FAR changes do not impose additional information collection requirements.

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

Government procurement.

Dated: September 19, 2006

Ralph De Stefano,

Director,Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 22, 25 and 52, which was published at 71 FR 864, January 5, 2006, is adopted as a final rule without change.

[FR Doc. 06–8207 Filed 9–27–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–13; FAR Case 2005–034; Item VI; Docket 2006–0020, Sequence 9]

RIN 9000–AK52

Federal Acquisition Regulation; FAR Case 2005–034, Reporting of Purchases from Overseas Sources

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 Section 837 of Division A of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115) and similar sections in subsequent appropriations acts. Section 837 requires the head of each Federal agency to submit a report to Congress relating to acquisitions of articles, materials, or supplies that are manufactured outside the United States. This rule amends the FAR to request from offerors necessary data regarding place of manufacture.

DATES: *Effective Date:* September 28, 2006.

Applicability Date: This amendment is mandatory for solicitations issued and contracts awarded on or after October 1, 2006. To meet the congressionally mandated reporting requirement, agencies may incorporate the new FAR provision 52.225–18 or corresponding requirement at 52.212–3 in solicitations issued or contracts awarded prior to October 1, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before November 27, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–13, FAR case 2005–034, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for this document at the ''Federal Acquisition

Regulation'' agency and review the ''Document Title'' column; click on the Document ID number. Click on ''Add Comments''.

You may also search for any document using the ''Advanced search/ document search'' tab, selecting from the agency field ''Federal Acquisition Regulation'', and typing the FAR case number in the keyword field.

- 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 2005–13, FAR case 2005–034, 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: For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2005–13, FAR case 2005–034. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2005–034.

SUPPLEMENTARY INFORMATION:

A. Background

Section 837 of Division A of the Fiscal Year 2006 Consolidated Appropriations Act (Pub. L. 109–115) requires the head of each Federal agency to submit a report to Congress on the dollar value of acquisitions made by the agency of articles, materials, or supplies that are manufactured outside the United States. The law also requests an itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act and a summary of the total procurement funds spent on goods manufactured in the United States. Similar requirements were contained in the Fiscal Year 2004 and 2005 Consolidated Appropriations Acts (Section 645 of Division F, Pub. L. 108–199 and Section 641 of Division H, Pub. L. 108–447, respectively), and the Councils anticipate that this requirement will continue for at least several years into the future.

For purposes of this report, the criteria established in the law is only whether an end product is manufactured in the United States or outside the United States, without regard to the origin of the components (see 25.001(c)). FAR Part 25 defines the ''United States'' to include the 50 States, the District of Columbia, and the outlying areas. ''Outlying areas'' are defined in FAR Subpart 2.1 to include commonwealths, territories, and minor outlying islands of the United States.

Agency reporting will be geared to collection of data at the acquisition level, rather than the line item level. All data in the Federal Procurement Data System is currently collected at the acquisition level. The Councils considered the possibility of requiring the reporting to be on a line item basis, but rejected this approach because the excessive reporting burden far outweighed any additional accuracy of reporting that might be achieved. Since reporting is to be provided at the level of each acquisition, over-reporting is avoided by reporting only those acquisitions that are predominantly for the acquisition of manufactured end products.

Likewise, the offeror will report manufacture inside or outside the United States and its outlying areas based on the predominance of the manufactured goods offered, and the contracting officer will select the predominant reason for acquiring the foreign manufactured end products, if more than one reason applies.

Using this total acquisition approach, the Councils therefore adopt the following minimum requirements for the report:

1. Provide dollar value of acquisitions of predominantly manufactured end products, broken down into—

a. Place of manufacture is outside the United States and its outlying areas;

b. Place of manufacture is inside the United States or its outlying areas; and

c. Total of a. and b.

2. For acquisitions in paragraph 1.a., provide the number of acquisitions in each exception category, and the total number of such acquisitions. The exception categories are—

- Use outside the United States;
- Resale;
- Commercial information technology;
- Public interest determination;
- Trade agreements;
- Domestic nonavailability;
- Unreasonable cost; and
- Qualifying country - For DoD only, the foreign manufactured end products are predominantly qualifying country end products (DFARS 225.003 and 225.872–1).

In order to fulfill these minimum reporting requirements, the agencies will need additional data—

- From offerors, as to whether manufactured end products are predominantly manufactured in the United States or its outlying areas, or outside the United States and its outlying areas; and
- From contracting officers, as to the predominant reason for acquisition of foreign manufactured end products.

This interim rule adds a FAR provision 52.225–18, Place of Manufacture, in order to collect the necessary data on place of manufacture. A corresponding requirement has been added to FAR 52.212–3, Offeror Representations and Certifications—Commercial Items. The contracting officer determines the use of 52.225–18 based on estimation of whether the solicitation is predominantly for the acquisition of manufactured end products (*i.e.*, the estimated value of the manufactured end products equals or exceeds the estimated value of other items to be acquired as a result of the solicitation.) The provision defines a ''manufactured end product'' to include any product code purchased by the Government except for certain Federal Supply Groups or Classes that are excluded from the definition. The provision also defines ''place of manufacture'' to mean the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

The Councils will coordinate with Federal Procurement Data System (FPDS) personnel, so that the data system can accommodate the data set forth in this notice as necessary to meet the statutory reporting requirement. FPDS will provide a standardized report of purchases from sources outside the United States based on the required fields. It is anticipated that a standardized report will facilitate the ability of agencies to meet the reporting requirement.

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 this interim rule does not change the rules for buying, it only adds an information collection requirement. It will not have a significant economic impact to ask offerors of manufactured end products to check off a box to indicate whether products offered to the

Government are predominantly manufactured in the United States or outside the United States. The offeror is not even required to identify the country of manufacture if the product is manufactured outside the United States. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 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 2005–13, FAR case 2005–034), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning FAR 52.225–18 was forwarded to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

There will be an estimated 38,146 burden hours for the new provision 52.225–18, Place of Manufacture. Accordingly, in accordance with 5 CFR 1320.13, the FAR Secretariat has obtained an emergency approval of a new information collection requirement concerning OMB Control Number 9000–0161, FAR Case 2005–034, Reporting of Purchases from Overseas Sources, from the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden:

We estimate the annual total burden hours as follows:

Based on the FPDS data for Fiscal Year 2004 on number of contract actions for Federal supplies and equipment (summary by PSC group), we estimate the number of solicitations predominantly for manufactured supplies and equipment equals 762,920 and the number of responses to the solicitations equals 3,814,600 (average of 5 responses per solicitation). We further estimate the number of respondents at 95,365, based on an estimate of 40 responses per respondent. The total response burden hours equals 38,146 hours (3,814,600 responses x average of .01 hours per response).

Respondents: 95,365

Responses per respondent: 40

Total annual responses: 3,814,600

Preparation hours per response: .01

Total response burden hours: 38,146

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than November 27, 2006 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0161, FAR Case 2005–034, Reporting of Purchases from Overseas Sources, in all correspondence.

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 report for Fiscal Year 2006 is due within 180 days after the end of the fiscal year and it is particularly important that this rule be implemented before the beginning of the next fiscal year in order to start collecting data in this fiscal year and to have data covering the entire Fiscal Year 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 25 and 52

Government procurement.

Dated: September 19, 2006

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 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. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN CONTRACTING

■ 2. Revise section 25.001(c) to read as follows:

25.001 General.

* * * * *

(c) The test to determine the country of origin for an end product under the Buy American Act (see the various country ''end product'' definitions in 25.003) is different from the test to determine the country of origin for an end product under the trade agreements, or the criteria for the report on end products manufactured outside the United States (see 25.004).

(1) The Buy American Act uses a two-part test to define a ''domestic end product'' (manufacture in the United States and a formula based on cost of domestic components).

(2) Under the trade agreements, the test to determine country of origin is ''substantial transformation'' (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(3) For the reporting requirement at 25.004, the only criterion is whether the place of manufacture of an end product is in the United States or outside the United States, without regard to the origin of the components.

■ 3. Add section 25.004 to read as follows:

25.004 Reporting of acquisition of end products manufactured outside the United States.

(a) In accordance with the requirements of Section 837 of Division A of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115) and similar sections in subsequent appropriations acts, the head of each Federal agency must submit a report to Congress on the amount of the acquisitions made by the agency from entities that manufacture end products outside the United States in that fiscal year.

(b) This report will be partially based on information collected from offerors

using solicitation provision 52.225–18, Place of Manufacture (and its commercial item equivalent in 52.212–3, Offeror Representations and Certifications–Commercial Items). For purposes of this report, the criteria established in the law is only whether the place of manufacture of an end product is in the United States or outside the United States, without regard to the origin of the components (see 25.001(c)).

■ 4. Amend section 25.1101 by adding paragraph (f) to read as follows:

25.1101 Acquisition of supplies.

* * * * *

(f) Insert the provision at 52.225–18, Place of Manufacture, in solicitations that are predominantly for the acquisition of manufactured end products, as defined in the provision at 52.225–18 (*i.e.*, the estimated value of the manufactured end products exceeds the estimated value of other items to be acquired as a result of the solicitation).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. Amending the introductory paragraph of the provision by removing from the first sentence ''paragraph (j)'' and adding ''paragraph (k)'' in its place; and by removing from the second sentence ''paragraphs (b) through (i)'' and adding ''paragraphs (b) through (j)'' in its place;

■ c. Amending paragraph (a) by removing from the end of the introductory paragraph the colon and adding an em dash in its place; and by adding in alphabetical order, the definitions ''Manufactured end product'' and ''Place of manufacture'';

■ d. Redesignating paragraph ''j'' as paragraph ''k''; and adding new paragraph ''j'';

■ e. In the newly designated paragraph (k)(1), removing ''paragraph (j)'' and adding ''paragraph (k)(2)'' in its place; and

■ f. In the newly designated paragraph (k)(2), in the bracketed paragraph, removing ''*(b) through (i)*'' and adding ''*(b) through (j)*'' in its place.

The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS–COMMERCIAL ITEMS (SEP 2006)

* * * * *

(a) * * *

Manufactured end product means any end product in Federal Supply Classes (FSC) 1000–9999, except—

(1) FSC 5510, Lumber and Related Basic Wood Materials;

(2) Federal Supply Group (FSG) 87, Agricultural Supplies;

(3) FSG 88, Live Animals;

(4) FSG 89, Food and Related Consumables;

(5) FSC 9410, Crude Grades of Plant Materials;

(6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) FSC 9610, Ores;

(9) FSC 9620, Minerals, Natural and Synthetic; and

(10) FSC 9630, Additive Metal Materials.

Place of manufacture means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

* * * * *

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) ☐ In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) ☐ Outside the United States.

* * * * *

(End of provision)

■ 6. Add section 52.225–18 to read as follows:

52.225–18 Place of Manufacture.

■ As prescribed in 25.1101(f), insert the following solicitation provision:

PLACE OF MANUFACTURE (SEP 2006)

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

Manufactured end product means any end product in Federal Supply Classes (FSC) 1000–9999, except—

(1) FSC 5510, Lumber and Related Basic Wood Materials;

(2) Federal Supply Group (FSG) 87, Agricultural Supplies;

(3) FSG 88, Live Animals;

(4) FSG 89, Food and Related Consumables;

(5) FSC 9410, Crude Grades of Plant Materials;

(6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) FSC 9610, Ores;

(9) FSC 9620, Minerals, Natural and Synthetic; and

(10) FSC 9630, Additive Metal Materials.

Place of manufacture means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

(b) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) ☐ In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) ☐ Outside the United States.

(End of provision)

[FR Doc. 06–8208 Filed 9–27–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 2005–13; FAR Case 2005–022; Item VII;Docket 2006–0020, Sequence 14]

RIN 9000–AK34

Federal Acquisition Regulation; FAR Case 2005–022, Exception to the Buy American Act for Commercial Information Technology

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 to a final rule without change, an interim rule amending the Federal Acquisition