

22.404-5 [Amended]

■ 2. Amend section 22.404-5 in paragraph (c)(3) by removing "submitted proposals" and adding "have not been eliminated from the competition" in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-31; FAR Case 2008-021; Item IV; Docket 2009-0005; Sequence 1]

RIN 9000-AL16

Federal Acquisition Regulation; FAR Case 2008-021, Least Developed Countries that are Designated Countries

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 a revision by the United States Trade Representative (USTR) to the list of Least Developed Countries that are designated countries under the Trade Agreements Act of 1979.

DATES: Effective Date: March 19, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-31, FAR case 2008-021.

SUPPLEMENTARY INFORMATION:

A. Background

The list of Least Developed Countries is derived from a United Nations list of Least Developed Countries. The USTR has revised the list of Least Developed Countries that are designated as eligible countries under the Trade Agreements Act of 1979, as amended, to add Liberia and to remove Cape Verde.

This final rule amends the FAR to revise (a) the definitions of "designated country" and "least developed country"

at FAR 25.003 and (b) the definition of "designated country" in the clauses at FAR 52.225-5, Trade Agreements, and 52.225-11, Buy American Act—Construction Materials Under Trade Agreements.

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 Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, 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 2005-31, FAR case 2008-021), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, et seq.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

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 ACQUISITION

2. Amend section 25.003 by revising paragraph (3) of the definition "Designated country" and the definition "Least developed country" to read as follows:

25.003 Definitions.

* * * * *

Designated country means any of the following countries:

* * * * *

(3) A least developed country (Afghanistan, Angola, Bangladesh,

Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

* * * * *

Least developed country means any of the following countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.212-5 by revising the date of the clause and paragraph (b)(31) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (MAR 2009)

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(b) * * * (31) 52.225-5, Trade Agreements (MAR 2009) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

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4. Amend section 52.225-5 by revising the date of the clause and in paragraph (a) in the definition "Designated country", revising paragraph (3) to read as follows:

52.225-5 Trade Agreements.

* * * * *

TRADE AGREEMENTS (MAR 2009)

(a) * * * Designated Country * * *

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia,

Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

* * * * *

■ 5. Amend section 52.225-11 by revising the date of the clause and in paragraph (a) in the definition “Designated country”, revising paragraph (3) to read as follows:

52.225-11 Buy American Act—Construction Materials Under Trade Agreements.

* * * * *

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAR 2009)

(a) * * *

Designated Country * * *

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 26, 31, and 52

[FAC 2005-31; FAR Case 2008-017; Item V; Docket 2009-0007, Sequence 1]

RIN 9000-AL15

Federal Acquisition Regulation; FAR Case 2008-017, Federal Food Donation Act of 2008

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

Federal Food Donation Act of 2008 (Pub. L. 110-247) which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

DATES: *Effective Date:* March 19, 2009.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before May 18, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-31, FAR case 2008-017, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2008-017” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2008-017. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2008-017” on your attached document.

- *Fax:* 202-501-4067.

- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-31, FAR case 2008-017, 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: Michael Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2008-017.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Food Donation Act of 2008 (Pub. L. 110-247) (Act) encourages Federal agencies and their contractors to donate excess food to nonprofit organizations serving the needy. The Act requires Federal contracts above \$25,000 for the provision, service, or sale of food in the United States, to include a clause that encourages, but does not require, the donation of excess food to nonprofit organizations. The Act

would also extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

The interim rule is applicable to contracts above \$25,000 (greater than \$25,000) for the provision, service, or sale of food in the United States (*i.e.*, food supply or food service). The type of solicitations and contract actions anticipated to be applicable to this law will mostly be for fixed-price commercial services; however, there may be circumstances when a noncommercial and/or cost reimbursement requirement may apply. For example, on an indefinite-delivery, indefinite-quantity (IDIQ) cost reimbursement contract for logistical support to be performed in the United States, there may be a task order needed to provide food service to feed personnel. This FAR change applies to solicitations issued on or after the effective date of this interim rule (see FAR 1.108(d)). Agencies will have to update their automated contract systems to include the clause if the contract calls for the provision, service, or sale of food in the United States. The statute instructed that the FAR be revised to cover the lease or rental of Federal property to a private entity for events at which food is provided in the United States. However, the FAR covers the acquisition of supplies and services (FAR 1.104), but does not cover the outlease of real property. The GSA has jurisdiction over changes to the Federal Management Regulation (FMR) and we anticipate a change in the FMR to address this requirement. The proposed revisions are to the FAR parts 26, 31, and 52. The detailed explanation of the interim rule follows:

1. *Part 26—Other Socioeconomic Programs:* Adds a new Subpart 26.4, Food Donations to Nonprofit Organizations.

a. The Councils anticipate that the majority of solicitation and contract actions that may be applicable to this Act are fixed-price commercial services; therefore, Subpart 26.4 is the most appropriate place to implement this Act. This subpart applies to all contracts greater than \$25,000 for the provision, service, or sale of food in the United States. Executive agencies and contractors are encouraged to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States. Instead of using “above \$25,000” as stated in the Act, the rule uses “greater than \$25,000” which is used throughout the FAR.