flexibility. The Office of Information and Regulatory Affairs (OIRA) has
deemed that this is not a significant regulatory action and, therefore, was not
subject to review under section 6(b) of E.O. 12866, Regulatory Planning and
Review, dated September 30, 1993, and that this rule is not a major rule under

IV. 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. The Final Regulatory Flexibility Analysis (FRFA)
is summarized as follows.

This rule implements section 825 of the NDAA for FY 2011 and section 813 of
the NDAA for FY 2012, which extended the sunset date for protests of task and delivery
The authority to file protests against the award of task or delivery orders is relatively
new, and there is little data available, as such protests may be filed with the agency
and National Aeronautics and Space Administration.

Interested parties may obtain a copy of the FRFA from the Regulatory
Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the
Chief Counsel for Advocacy of the Small Business Administration.

The final rule does not contain any information collection requirements that
require the approval of the Office of Management and Budget under the

List of Subjects in 48 CFR Part 16

Government procurement.


Laura Auletta,
Director, Office of Governmentwide Acquisition Policy, Office of Acquisition
Policy, Office of Governmentwide Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR part 16, which was
published in the Federal Register at 77 FR 44062 on July 26, 2012, (which
incorporated an interim rule published in the Federal Register at 76 FR 39238
on July 5, 2011), is adopted as final with

[FR Doc. 2013–01747 Filed 1–28–13; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52
[FAC 2005–65; FAR Case 2012–012; Item
III; Docket 2012–0012, Sequence 1]

RIN 9000–AM24

Federal Acquisition Regulation; Free Trade Agreement—Colombia

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with change, the
interim rule amending the Federal Acquisition Regulation (FAR) to
implement the United States-Colombia Trade Promotion Agreement. This Trade
Promotion Agreement is a free trade agreement (FTA) that provides for
mutually non-discriminatory treatment of eligible products and services from
Colombia.

DATES: Effective Date: January 29, 2013.

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 2005–65, FAR
Case 2012–012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at
77 FR 27548 on May 10, 2012, to
implement the United States-Colombia Trade Promotion Agreement
Implementation Act (Pub. L. 112–42)
(19 U.S.C. 3805 note). The comment
period closed on July 9, 2012. No
comments were received on the interim
rule.

The interim rule added Colombia to the
definition of “Free Trade Agreement
country” in multiple locations in the
FAR.

The Colombia FTA covers acquisition
of supplies and services equal to or
exceeding $77,494. The threshold for
the Colombia FTA is $7,777,000 for
construction. The excluded services for
the Colombia FTA are the same as for
the Bahrain FTA, Dominican Republic—
Central American FTA, Chile FTA,
NAFTA, Oman FTA, and Peru FTA.

Because the Colombia FTA construction threshold of $7,777,000 is the
same as the World Trade Organization (WTO) Government
Procurement Agreement (GPA)
threshold, no new clause alternates are
required for the Buy American Act—
Construction Materials under Trade
Agreements provision and clause (FAR
52.225–11 and 52.225–12) or the
Recovery Act FAR clauses at 52.225–23
and 52.225–24.

The final rule corrects the
alphabetical order of the listing of the
Colombia Free Trade Agreement in the
heading of the fourth column of the
table at FAR 25.401(b).

II. Executive Order 12866

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. The Office of Information and Regulatory Affairs (OIRA) has deemed that 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, and that this rule is not a major rule under 5 U.S.C. 804.

III. 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. Although the rule now opens up Government procurement to the goods and services of Colombia, DoD, GSA, and NASA 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 Defense Federal Acquisition Regulation Supplement 225.401–70, and acquisitions that are set aside or provide other form of preference for small businesses are exempt. FAR 19.502–2 states that acquisitions of supplies or services with an anticipated dollar value between $3,000 and $150,000 (with some exceptions) are automatically reserved for small business concerns.

IV. Paperwork Reduction Act

The 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 the Office of Management and Budget Control Numbers 9000–0136, titled: Commercial Item Acquisition; 9000–0130, titled: Buy American Act-Free Trade Agreements-Israeli Trade Act Certificate; 9000–0023, titled: Trade Agreements certificate; and 9000–0141, titled: Buy American-Construction, 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 Colombia would be listed under.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.


Laura Auletta,
Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

Interim Rule Adopted as Final with Change

Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published in the Federal Register at 77 FR 27548, May 10, 2012, is adopted as final with the following change:

PART 25—FOREIGN ACQUISITION

§ 25.401 [Amended]

■ Amend section 25.401, in the table which follows paragraph (b), by removing from the table heading “Colombia FTA, Chile FTA,” and adding “Chile FTA, Colombia FTA,” in its place.

[FR Doc. 2013–01748 Filed 1–8–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAC 2005–65; FAR Case 2011–011; Item IV; Docket 2011–0011, Sequence 1]

RIN 9000–AM13

Federal Acquisition Regulation; Unallowability of Costs Associated With Foreign Contractor Excise Tax

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 implementing the prohibition against reimbursement of the 2 percent excise tax, by revising the FAR rules so that the cost of the tax cannot be included as part of a payment, or as part of a cost-based negotiated price. Regulations under section 5000C will be forthcoming from the Department of the Treasury that will provide specific guidance regarding the application of the tax and the procedures for withholding the tax. Once the Department of the Treasury implements procedures for withholding this 2 percent excise tax, the impact on certain Federal procurement payments to foreign persons. The rule disallows the cost associated with the 2 percent excise tax on certain foreign procurements.

DATES: Effective Date: February 28, 2013.


SUPPLEMENTARY INFORMATION:

I. Background

The James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347) was signed into law and effective on January 2, 2011. Section 301 of the Act amends the Internal Revenue Code of 1986 by adding a new section 5000C, Imposition of tax on certain foreign procurements (26 U.S.C. 5000C). Section 5000C imposes a 2 percent excise tax on payments made to foreign persons pursuant to Government contracts for the provision of goods or services, if the goods are manufactured or produced in, or the services are performed in, a country that is not a party to an international procurement agreement with the United States. The statute applies to contracts entered into on or after January 2, 2011. The statute does not apply, however, if the imposition of the tax would be inconsistent with any international agreement. The tax is to be collected in a manner similar to other U.S. taxes withheld on payments to foreign persons. Additionally, section 301 stipulates that no funds are to be disbursed to any foreign contractor in order to reimburse the tax imposed (26 U.S.C. 5000C Note).

On February 22, 2012, DoD, GSA, and NASA published a proposed rule in the Federal Register at 77 FR 10461 implementing the prohibition against reimbursement of the 2 percent excise tax, by revising the FAR rules so that the cost of the tax cannot be included as part of a payment, or as part of a cost-based negotiated price.

Regulations under section 5000C will be forthcoming from the Department of the Treasury that will provide specific guidance regarding the application of the tax and the procedures for withholding the tax. Once the Department of the Treasury implements procedures for withholding this 2 percent excise tax, the impact on certain Federal procurement payments to foreign persons. The rule disallows the cost associated with the 2 percent excise tax on certain foreign procurements.

DATES: Effective Date: February 28, 2013.


SUPPLEMENTARY INFORMATION:

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