

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 25 and 52****[FAC 90-36; FAR Case 95-304]****RIN 9000-AG80****Federal Acquisition Regulation;
Uruguay Round**

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 have agreed on an interim rule to amend the Federal Acquisition Regulation (FAR) to implement the renegotiated General Agreement on Tariffs and Trade (GATT) Government Procurement Agreement (1996 Code) (Uruguay Round) which becomes effective January 1, 1996. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective:* January 1, 1996. *Applicability:* This regulation applies to solicitations issued on or after January 1, 1996. *Comments Due:* Comments on the interim rule should be submitted to the FAR Secretariat at the address shown below on or before February 27, 1996 to be considered in the formulation of a final rule.

ADDRESSES: FAR Secretariat, Room 4037, GS Building, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501-1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-36, FAR case 95-304.

SUPPLEMENTARY INFORMATION:**A. Background**

This interim rule amends the FAR to implement the renegotiated General Agreement on Tariffs and Trade (GATT) Government Procurement Agreement (1996 Code) (Uruguay Round) which becomes effective January 1, 1996. This agreement is implemented in statute by the Uruguay Round Agreement Act,

Public Law 103-465, which amends the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582).

B. Regulatory Flexibility Act

This 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 does not impose any new requirements on contractors, large or small. The interim rule primarily changes the list of designated foreign countries and extends applicability of the Trade Agreements Act to all agencies for supply and construction contracts over certain dollar thresholds. However, those contracts which are now subject to the Trade Agreements Act were already subject to the Memorandum of Understanding Between the United States of America and the European Community on Government Procurement. This change should have minimal impact on U.S. firms. The interim rule will not diminish existing preferences for small businesses, because purchases under small and small disadvantaged business preference programs are exempted from the Trade Agreements Act. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAC 90-36, FAR case 95-304, in correspondence.

C. Paperwork Reduction Act

This interim rule does not impose any new reporting or recordkeeping requirements which require Office of Management and Budget (OMB) approval under 44 U.S.C. 3501, *et seq.* Contractors, which previously were required to respond to the now deleted provision at 52.225-16, Buy American Act—Supplies under European Community Agreement Certificate, will now be required to respond to the comparable provision at 52.225-8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate (OMB Control No. 9000-0046).

D. Determination to Issue an Interim Rule

A determination has been made under 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 compelling reasons exist to promulgate this interim rule without prior opportunity for

public comment. This action is necessary in order to implement the renegotiated General Agreement on Tariffs and Trade (GATT) Government Procurement Agreement (1996 Code) (Uruguay Round) which becomes effective January 1, 1996. This agreement is implemented in statute by the Uruguay Round Agreement Act, Public Law 103-465, which amends the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582). However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: December 22, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Number 90-36

Federal Acquisition Circular (FAC) 90-36 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-36 is effective January 1, 1996. This regulation applies to solicitations issued on or after January 1, 1996.

Dated: December 21, 1995.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: December 22, 1995.

Ida M. Ustad,

Associate Administrator, Office of Acquisition Policy, GSA.

Dated: December 20, 1995.

Deidre Lee,

Associate Administrator for Procurement, NASA.

Therefore, 48 CFR Parts 25 and 52 are amended 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. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION**25.101 [Amended]**

2. At 25.101 in the definition of "Instrumentality" the phrase "European Economic Community" is revised to read "European Union".

3. Section 25.104 is amended by revising paragraph (a) to read as follows:

25.104 Acquiring civil aircraft and related articles.

(a) The U.S. Trade Representative, on February 19, 1980 (45 FR 12349, February 25, 1980), waived applying the Buy American Act to the acquisition of civil aircraft and related articles of countries or instrumentalities that are parties to the Agreement on Civil Aircraft. The representative acted under the authority of section 303 of the Trade Agreements Act of 1979 (19 U.S.C. 2513). Countries and Instrumentalities that are parties to the agreement (as of January 1, 1996) are Canada, the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom), Japan, Norway, Romania, and Switzerland. The Office of the U.S. Trade Representative, Washington, DC 20506, can provide information on changes to the list of parties to the agreement made since January 1, 1996.

* * * * *

4. Section 25.109 is amended by revising paragraph (d), removing paragraphs (e) and (f), redesignating paragraph (g) as (e) and revising the introductory text and newly designated paragraph (e)(2); and amending newly designated paragraph (e)(1) by removing the word "or". The revised text reads as follows:

25.109 Solicitation provisions and contract clauses.

* * * * *

(d) Except as provided in paragraph (e) of this section, the contracting officer shall insert the clause at 52.225-3, Buy American Act—Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States.

(e) Do not use the clause prescribed in paragraph (d) of this section when—

* * * * *

(2) The acquisition is made under a trade agreement (see subpart 25.4); or

* * * * *

25.202 [Amended]

5. At 25.202(c) the reference to "25.402(a) (3) and (4)" is revised to read "25.402(a) (1) and (3).

6. At 25.205 paragraph (b) is revised to read as follows:

25.205 Solicitation provision and contract clause.

* * * * *

(b)(1) For construction solicitations and contracts with an estimated

acquisition value of \$7,311,000 or more, insert the basic clause at 52.225-15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement.

(2) For construction solicitations and contracts with an estimated value from \$6,500,000 to \$7,311,000, insert the clause with its Alternate I.

7. Section 25.400 is revised to read as follows:

25.400 Scope of subpart.

(a) This subpart provides policies and procedures for acquisitions subject to the Agreement on Government Procurement, as approved by Congress in the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), and as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), and other trade agreements including—

(1) Acquisitions from countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.);

(2) Acquisitions involving offers of Israeli end products under the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note);

(3) Acquisitions involving offers of Canadian or Mexican end products under the North American Free Trade Agreement (NAFTA), as approved by Congress in the NAFTA Implementation Act (Pub. L. 103-182, 107 Stat. 2057); and

(4) The Agreement on Civil Aircraft (19 U.S.C. 2513).

(b) For application of the trade agreements which are unique to individual agencies (Department of Defense, National Aeronautics and Space Administration, Department of Energy (Power Marketing Administration), Department of the Interior (Bureau of Reclamation) and Department of Transportation (Federal Aviation Administration), see agency regulations.

8. Section 25.401 is amended by revising the definitions for "Canadian end product," "Caribbean Basin country end product" introductory text and paragraphs (a) and (b), "Designated country," "Designated country end product," and "Mexican end product,"; definitions for "European Community (EC) construction material," "EC country," and "EC end product," are removed; and a definition for "Designated country construction material," is added to read as follows:

25.401 Definitions.

* * * * *

Canadian end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Canada, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

* * * * *

Caribbean Basin country end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Caribbean Basin country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. The term excludes products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

* * * * *

Designated country, as used in this subpart, means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed below:

Aruba	Japan
Austria	Lesotho
Bangladesh	Liechtenstein
Belgium	Luxembourg
Benin	Malawi
Bhutan	Maldives
Botswana	Mali
Burkina Faso	Nepal
Burundi	Netherlands
Canada	Niger
Cape Verde	Norway
Central African Republic	Portugal
Chad	Republic of Korea
Comoros	Rwanda

Denmark	Somalia
Finland	Spain
France	Sudan
Gambia	Sweden
Germany	Switzerland
Greece	Tanzania U.R.
Guinea	Uganda
Haiti	United Kingdom
Ireland	Western Samoa
Israel	Yemen
Italy	

Designated country construction material, as used in this subpart, means construction material that (a) is wholly the growth, product, or manufacture of a designated country, or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

Designated country end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the designated country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

* * * * *

Mexican end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Mexico, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

9. At 25.402 paragraphs (a) (1) through (3) and (c) are revised, (a)(4) is

removed, and (a) (5) and (6) are redesignated as (a) (4) and (5). The revised text reads as follows:

25.402 Policy.

(a)(1) Executive Order 12260 requires the U.S. Trade Representative to set the dollar threshold for application of the Trade Agreements Act. The current threshold is \$190,000 for supply and services contracts and \$7,311,000 for construction contracts. The thresholds will be published in the Federal Register and will be distributed through agency procedures on an expedited basis. When the value of the proposed acquisition of an eligible product is estimated to be at or over the dollar threshold, agencies shall evaluate offers for an eligible product without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3). When the value of the proposed construction contract is estimated to be at or over the dollar threshold, agencies shall evaluate offers of designated country construction materials without regard to the restrictions of the Buy American Act (see subpart 25.2) or the Balance of Payments Program (see subpart 25.3). When the value of the proposed acquisition is estimated to be below the Trade Agreements Act threshold, the restrictions of the Buy American Act or the Balance of Payments Program shall be applied to foreign offers, except as noted in paragraphs (a)(2) and (a)(3) of this section (see 25.105).

(2) As required by Article 15 of the U.S.-Israel Free Trade Area Agreement, agencies other than the Department of Defense, Department of Energy, Department of Transportation, the Bureau of Reclamation of the Department of the Interior, the Federal Housing Finance Board, and the Office of Thrift Supervision shall evaluate offers of Israeli end products at or above \$50,000 in amount without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3).

(3) As required by the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat. 2057), agencies shall evaluate offers of the following NAFTA country end products without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3):

- (i) NAFTA country construction materials under construction contracts with an estimated acquisition value of \$6,500,000 or more.
- (ii) Canadian end products under supply contracts with an estimated

value above \$25,000 and Mexican end products under supply contracts with an estimated value of \$50,000 or more.

* * * * *

(c)(1) There shall be no acquisition of foreign end products subject to the Trade Agreements Act unless the foreign end products are eligible products, except as provided in paragraphs (c)(2) and (c)(3) of this section.

(2) The prohibition in paragraph (c)(1) of this section does not apply if offers of domestic end products or of eligible products are either not received or are insufficient to fulfill the requirements.

(3) A waiver may be granted under section 302(b)(2) of the Trade Agreements Act (19 U.S.C. 2512(b)(2)).

* * * * *

10. Section 25.403 is revised to read as follows:

25.403 Exceptions.

This subpart does not apply to—

(a) Acquisitions below the dollar thresholds in 25.402(a) (1) through (3), respectively;

(b) Purchases under small or small disadvantaged business preference programs;

(c)(1) Purchases of arms, ammunition or war materials, or purchases indispensable for national security or for national defense purposes, by the Department of Defense, as provided in departmental regulations;

(2) Purchases indispensable for national security or for national defense purposes, subject to policies established by the U.S. Trade Representative.

(d) Research and development contracts;

(e) Purchases of items for resale;

(f) Purchases under subpart 8.6, Acquisition from Federal Prison Industries, Inc., and subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled; or

(g) Purchases of products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703 (b); which presently are—

(1) Textiles and apparel articles that are subject to textile agreements;

(2) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for this purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(3) Tuna, prepared or preserved in any manner in airtight containers;

(4) Petroleum, or any product derived from petroleum; and

(5) Watches and watch parts (including cases, bracelets and straps),

of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column two rates of duty apply.

25.406 and 25.407 [Removed]

11. Sections 25.406 and 25.407 are removed and reserved.

12. Section 25.408 is amended by revising the section heading and paragraphs (a)(2) and (4) to read as follows:

25.408 Solicitation provisions and contract clauses.

(a) * * *

(2) The clause at 52.225-9, Buy American Act—Trade Agreements—Balance of Payments Program, in solicitations and contracts for supplies where the contracting officer has determined that the acquisition is subject to the Trade Agreements Act;

* * * * *

(4) The clause at 52.225-21, Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program, in solicitations and contracts for supplies where the contracting officer has determined that the acquisition is not subject to the Trade Agreements Act but is subject to NAFTA.

* * * * *

13. 25.1000 is amended by adding a new sentence at the end to read as follows:

25.1000 Scope of subpart.

* * * For thresholds which are unique to individual agencies (e.g., Power Marketing Administration of the Department of Energy), see agency regulations.

14. 25.1001 is revised to read as follows:

25.1001 Definitions.

As used in this subpart—

Sanctioned European Union (EU) construction means construction to be performed in a sanctioned member state of the EU and the contract is awarded by a contracting activity located in the United States or its territories.

Sanctioned EU end product means an article that (a) is wholly the growth product or manufacture of a sanctioned member state of the EU or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from

that from which it was so transformed in a sanctioned member state of the EU. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of these incidental services does not exceed that of the product itself.

Sanctioned EU services means services to be performed in a sanctioned member state of the EU when the contract is awarded by a contracting activity located in the United States or its territories.

Sanctioned member state of the EU means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom.

15. 25.1002 is amended by revising paragraphs (a)(1), (2), and (3) introductory text, removing (a)(3)(i), and redesignating (a)(3)(ii) as (a)(3)(i) and revising it, and redesignating (a)(3)(iii) as (a)(3)(ii); paragraph (c)(1) introductory text is amended by replacing "EC" with "EU." The revised text reads as follows:

25.1002 Trade sanctions.

(a) * * *

(1) Sanctioned EU end products with an estimated acquisition value less than \$190,000.

(2) Sanctioned EU construction with an estimated acquisition value less than \$7,311,000.

(3) Sanctioned EU services as follows:

(i) Service contracts with an estimated acquisition value less than \$190,000.

* * * * *

16. 25.1003 is revised to read as follows:

25.1003 Contract clauses.

Except as provided in 25.1002(b) and (c)—

(a) Insert the clause at 52.225-18, European Union Sanctions for End Products, in solicitations and contracts for supplies with an estimated acquisition value less than \$190,000.

(b) Insert the clause at 52.225-19, European Union Sanction for Services, in solicitations and contracts for—

(1) Services with an estimated acquisition value less than \$190,000; and

(2) All services listed in FAR 25.1002(a)(3)(ii).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-5 [Amended]

17. 52.212-5 is amended by revising the date of the clause to read "(JAN

1996)"; removing and reserving paragraph (b)(12); and in (b)(13) and (b)(14) by removing the phrase "Community Sanctions" and inserting "Union Sanctions" in its place.

18. 52.225-2 is amended by revising the introductory text, the clause date, and paragraph (b) to read as follows:

52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.

As prescribed in 25.109(c), insert the following provision:

Waiver of Buy American Act for Civil Aircraft and Related Articles (Jan 1996)

* * * * *

(b) The U.S. Trade Representative has waived applying the Buy American Act to the acquisition of civil aircraft and related articles (as defined in paragraph (a) of this clause) of countries or instrumentalities that are parties to the Agreement on Trade in Civil Aircraft. As of January 1, 1996, those countries and instrumentalities include Canada, the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom), Japan, Norway, Romania, and Switzerland.

* * * * *

19. 52.225-9 is amended as follows:

a. by revising the clause date;

b. in the definition of "Caribbean Basin country end product," which follows paragraph (a), the second sentence is revised, the third sentence is removed, and the fourth sentence is amended to hyphenate the word "duty-free";

c. in the definition of "Designated country end product," the second sentence is revised, and the third sentence is removed;

d. the definition "Eligible product" is added in alphabetical order;

e. in the definition of "NAFTA country end product," the second sentence is revised, and the third sentence is removed; and

f. in paragraph (b) the fifth sentence is revised.

The revised text reads as follows:

52.225-9 Buy American Act—Trade Agreements—Balance of Payments Program.

* * * * *

Buy American Act—Trade Agreements—Balance of Payments Program (Jan 1996)

(a) * * *

* * * * *

Caribbean Basin country end product. * * * The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its

supply; provided, that the value of those incidental services does not exceed that of the product itself. * * *

* * * * *

Designated country end product. * * *

The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

* * * * *

Eligible product, as used in this clause, means a designated, North American Free Trade Agreement (NAFTA), or Caribbean Basin country end product.

* * * * *

NAFTA country end product. * * * The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

(b) * * * Contractors may not supply a foreign end product for the line items subject to the Trade Agreements Act unless—

(1) The foreign end product is an eligible product (see FAR 25.401);

(2) The Contracting Officer determines that offers of domestic end products or of eligible products are either not received or are insufficient to fulfill the Government's requirements; or

(3) A waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

* * * * *

20. Section 52.225-15 is amended:

a. by revising the section and clause headings;

b. revising "25.205(b)" in the introductory text to read "25.205(b)(1)";

c. revising the clause date;

d. adding the definition "Designated country construction material" in alphabetical order;

e. removing the definitions "European Community construction material" and "EC country";

f. revising paragraph (b);

g. Amending paragraph (c) by replacing "EC" with "designated country" and revising "materialmen" to read "material men"; and

h. adding Alternate I.

The revised and added text reads as follows:

52.225-15 Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement.

* * * * *

Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade (Jan. 1996)

(a) * * *

Designated country construction material means a construction material that (a) is wholly the growth, product, or manufacture of a designated country (as defined at FAR 25.401), or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

* * * * *

(b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic material. In addition, the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) provide that designated country and NAFTA construction materials are exempted from application of the Buy American Act.

Alternate I (Jan 1996). As prescribed in 25.205(b)(2), substitute the following paragraphs (b) and (c) in place of paragraphs (b) and (c) of the basic clause:

(b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic material. In addition, the North American Free Trade Agreement (NAFTA) provides that NAFTA construction materials are exempted from application of the Buy American Act.

(c) The Contractor agrees that only domestic construction materials or NAFTA country construction materials will be used by the Contractor, subcontractors, material men and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

52.225-16 and 52.225-17 [Removed]

21. 52.225-16 and 52.225-17 are removed and reserved.

22. 52.225-18 is amended:

a. by revising the section and clause headings;

b. by revising the clause date;

c. in paragraph (a), in the definition "Sanctioned European Community (EC) end product" by revising "European Community" to read "European Union", revising "EC" to read "EU" (3 times), revising the second sentence, and removing the third sentence;

d. in the definition "Sanctioned member state of the EC" "EC" is revised to read "EU";

e. in paragraph (b) by revising "EC" to read "EU". The revised text reads as follows:

52.225-18 European Union Sanction for End Products.

* * * * *

European Union Sanction for End Products (Jan 1996)

* * * * *

(a) * * *

* * * * *

Sanctioned European Union (EU) end product * * * The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of these incidental services does not exceed that of the product itself.

* * * * *

23. Section 52.225-19 is amended by revising the section and clause headings, revising the clause date, in paragraph (a) by removing "Community (EC)" and inserting in its place "Union (EU)", and revising the term "EC" to read "EU" in paragraph (b). The revised headings and date appear below.

52.225-19 European Union Sanction for Services.

* * * * *

European Union Sanction for Services (Jan 1996)

* * * * *

24. 52.225-21 is amended by revising the clause date; in paragraph (a), in the definition "NAFTA country end product," by revising the second sentence and removing the third sentence; and by removing paragraph (d) and redesignating paragraph "(e)" as "(d)". The revised text reads as follows:

52.225-21 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

* * * * *

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (Jan 1996)

(a) Definitions. * * *

* * * * *

NAFTA country end product * * * The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

* * * * *

[FR Doc. 95-31466 Filed 12-28-95; 8:45 am]