

provided for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled.

**Item V—Discussion Requirements (FAR Case 1999–022)**

The rule amends FAR 15.306(d) to clarify that, although the contracting officer must discuss deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond and is encouraged to discuss other aspects of the offeror's proposal, the contracting officer is not required to discuss every area where the proposal could be improved. This clarifies the existing policy that any discussions beyond the minimum elements stated in the FAR are a matter of contracting officer judgment.

**Item VI—Definition of Subcontract in FAR Subpart 15.4 (FAR Case 2000–017)**

This final rule amends FAR 15.401 to exclude section 15.407–2, Make-or-buy programs, from application of the expanded definition of “subcontract” at FAR 15.401. This rule is a clarification and does not change any policy in Subpart 15.4, Contract Pricing.

**Item VII—North American Industry Classification System (FAR Case 2000–604)**

This rule finalizes, with minor changes, the interim rule which amended the FAR to convert size standards and other programs in the FAR that were based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). NAICS is a new system that classifies establishments according to how they conduct their economic activity. It is a significant improvement over the SIC system because it more accurately identifies industries. Since October 1, 2000, NAICS is to be used to establish the size standards for acquisitions. In addition, the designated industry groups in FAR 19.1005 have been converted to NAICS and contract actions will be reported using the NAICS code rather than the SIC code.

**Item VIII—Iceland Newly Designated Country under Trade Agreements Act (FAR Case 2001–025)**

This final rule amends the definition of “Designated country” at FAR 25.003, and the clause at 52.225–5, Trade Agreements, and the clause at 52.225–11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, to add Iceland to the list of designated

countries under the Trade Agreements Act (TAA). Contracting officers may now consider offers of end products or construction materials from Iceland in acquisitions subject to the TAA. The current TAA threshold for acquisition of supplies is \$177,000 and for acquisition of construction is \$6,806,000.

In addition, if the TAA applies, Executive Order 13126 of June 12, 1999, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, does not apply to contracts for the acquisition of products from foreign countries that are party to the Agreement on Government Procurement. Therefore, this final rule also adds Iceland to the list of excepted countries of origin at 22.1503(b)(4) and the associated clause at 52.222–19, Child Labor—Cooperation with Authorities and Remedies.

**Item IX—Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000–609)**

This final rule converts the interim rule published in FAC 97–25, in the **Federal Register** at 66 FR 22084, May 2, 2001, to a final rule without change. The rule added a new section to subpart 39.1 to implement section 813 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Pub. L. 106–398). Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless (1) the contracting officer first determines that the needs of the agency cannot be met without such requirement; or (2) the needs of the agency require the use of a type of contract other than a performance-based contract.

Dated: December 5, 2001.

**Al Matera,**

*Director, Acquisition Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2001–02 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 2001–02 is effective February 19, 2002, except for Items VII through IX, which are effective December 18, 2001.

Dated: December 5, 2001.

**Carolyn M. Balven,**

*Deputy Director, Defense Procurement.*

**Patricia A. Brooks,**

*Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

**Tom Luedtke,**

*Associate Administrator for Procurement, National Aeronautics and Space Administration.*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 2, 25, and 52**

[FAC 2001–02; FAR Case 2000–015;  
Item I]

RIN 9000–AJ24

**Federal Acquisition Regulation;  
Definitions of “Component” and “End  
Product”**

**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 restore the unique (Part 25) definitions of “component” and “end product” for acquisition of supplies. In addition, the Councils have made minor revisions to the definitions of “component” and “cost of components” for acquisition of construction.

**DATES:** Effective Date: February 19, 2002.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–02, FAR case 2000–015.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule restores unique definitions of “component” and “end

product” at FAR 25.003, and amends the definitions at FAR 2.101 and associated clauses 52.225-1, Buy American Act—Balance of Payments Program—Supplies; 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program; and 52.225-5, Trade Agreements, to comply with these definitions. The final rule under FAR case 97-024, Foreign Acquisition (Part 25 Rewrite), published in the **Federal Register** at 64 FR 72416, December 27, 1999, removed the unique Part 25 definitions of “component” and “end product,” applying standard definitions in Part 2 to Part 25 and associated clauses (other than clauses for construction). The Councils did not intend to make any substantive change to the FAR by these amendments. Because the Councils received comments addressing potential unintended substantive changes to the FAR that might result from these amendments, the Councils are reverting to the original definitions, with minor editorial corrections.

In addition, this rule revises the definition of “components” in FAR clauses 52.225-9, Buy American Act—Balance of Payments Program—Construction Materials, and 52.225-11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, to a definition of the singular term “component” and revises the definition of “cost of components” in these clauses to address components of construction material, rather than components of an end product (which is not applicable to construction).

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 final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR parts 2, 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 2001-02, FAR case 2000-015), 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. 3501, *et seq.*

## List of Subjects in 48 CFR Parts 2, 25, and 52

Government procurement.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 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 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by revising the definitions “Component” and “End product” to read as follows:

### 2.101 Definitions.

*Component* means any item supplied to the Government as part of an end item or of another component, except that for use in—

(1) Part 25, see the definition in 25.003;

(2) 52.225-1 and 52.225-3, see the definition in 52.225-1(a) and 52.225-3(a); and

(3) 52.225-9 and 52.225-11, see the definition in 52.225-9(a) and 52.225-11(a).

*End product* means supplies delivered under a line item of a Government contract, except for use in part 25 and the associated clauses at 52.225-1, 52.225-3, and 52.225-5, see the definitions in 25.003, 52.225-1(a), 52.225-3(a), and 52.225-5(a).

## PART 25—FOREIGN ACQUISITION

3. In section 25.003 add, in alphabetical order, the definitions “Component” and “End product”; and amend paragraph (1) of the definition “Cost of components” by removing “product” and adding “product or construction material” in its place. The added text reads as follows:

### 25.003 Definitions.

*Component* means an article, material, or supply incorporated

directly into an end product or construction material.

*End product* means those articles, materials, and supplies to be acquired for public use.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.225-1 by revising the date of the clause and the definitions “Component” and “End product” to read as follows:

### 52.225-1 Buy American Act—Balance of Payments Program—Supplies.

Buy American Act—Balance of Payments Program—Supplies (Feb 2002)

(a) \* \* \*

*Component* means an article, material, or supply incorporated directly into an end product.

*End product* means those articles, materials, and supplies to be acquired under the contract for public use.

5. Amend section 52.225-3 by revising the date of the clause and the definitions “Component” and “End product” to read as follows:

### 52.225-3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.

Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program (Feb 2002)

(a) \* \* \*

*Component* means an article, material, or supply incorporated directly into an end product.

*End product* means those articles, materials, and supplies to be acquired under the contract for public use.

6. Amend section 52.225-5 by revising the date of the clause and the definition “End product” to read as follows:

### 52.225-5 Trade Agreements.

Trade Agreements (Feb 2002)

(a) \* \* \*

*End product* means those articles, materials, and supplies to be acquired under the contract for public use.

7. Amend section 52.225-9 by revising the date of the clause and the definition “Component”; and by

amending the definition “Cost of components” in paragraph (1) by removing “end product” and adding “construction material” in its place. The revised text reads as follows:

**52.225–9 Buy American Act—Balance of Payments Program—Construction Materials.**

\* \* \* \* \*

Buy American Act—Balance of Payments Program—Construction Materials (Feb 2002)

(a) \* \* \*

*Component* means an article, material, or supply incorporated directly into a construction material.

\* \* \* \* \*

8. Amend section 52.225–11 by revising the date of the clause and the definition “Component”; and by amending the definition “Cost of components” in paragraph (1) by removing “end product” and adding “construction material” in its place. The revised text reads as follows:

**52.225–11 Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements.**

\* \* \* \* \*

Buy American Act—Balance of Payments Program—Construction Materials Under Trade Agreements (Feb 2002)

(a) \* \* \*

*Component* means an article, material, or supply incorporated directly into a construction material.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2, 11, 15, 23, and 42

[FAC 2001–02; FAR Case 1999–011; Item II]

RIN 9000–A171

### Federal Acquisition Regulation; Energy-Efficiency of Supplies and Services

**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 (E.O.) 13123 of June 3, 1999, Greening the Government through Efficient Energy Management.

**DATES:** *Effective Date:* February 19, 2002.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, Procurement Analyst, at (202) 208–7279. Please cite FAC 2001–02, FAR case 1999–011.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 30310, May 10, 2000. The proposed rule—

1. Defined in Subpart 2.1, Definitions—

a. “Energy-efficient product” (relocated and revised from FAR 23.704);

b. “Energy-savings performance contract” (ESPC); and

c. “Renewable energy” and “renewable energy technology”;

2. Revised the policies and sources of authority in Part 11;

3. Revised Part 15 to alert agencies to the special procedures at 10 CFR 436.33(b) that agencies must use when evaluating unsolicited proposals for ESPCs;

4. Revised and relocated guidance on energy-efficient products and services from Subpart 23.7 to Subpart 23.2 so that Subpart 23.7 would focus on environmentally preferable products and services;

5. Revised Subpart 23.2 by—

a. Renaming the subpart “Energy and Water Efficiency and Renewable Energy” to reflect its expanded subject area;

b. Deleting outdated definitions and guidance;

c. Adding guidance on energy- and water-efficient products (e.g., ENERGY STAR®) and services, and ESPCs; and

d. Directing contracting officers to sources for more detailed guidance and information; and

6. Made a number of editorial changes. Seven respondents submitted public comments on the proposed rule. The Councils considered all comments when developing this final rule. The major changes between the final rule and the proposed rule are that the final rule—

a. Provides additional emphasis on water conservation at FAR 11.002(d)(2), 23.000(d), and 23.703;

b. Deletes E.O. 12902 of March 8, 1994, Energy Efficiency and Water Conservation at Federal Facilities, at FAR 23.702(e) since this E.O. was revoked by Section 604 of E.O. 13123; and

c. Revises 42.302(a)(68) to better reflect the current practices of the contract administration office.

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 this rule simply provides additional guidance to Government contracting and technical personnel with respect to the Government’s preference, currently set forth in FAR Subpart 23.7, for buying environmentally preferable and energy-efficient products and services. This rule requires a contracting officer, when acquiring an energy-using product, to purchase an energy-efficient product (where life-cycle cost-effective and available), *i.e.*, a product that is in the upper 25 percent of energy efficiency as designated by the Department of Energy’s (DOE’s) Federal Energy Management Program or that meets DOE and Environmental Protection Agency (EPA) criteria for use of the “ENERGY STAR®” trademark label. The 25 percent benchmark for determining energy efficiency is currently addressed at FAR 23.704. Small entities that offer products to the Government may use the ENERGY STAR® label, if the product meets DOE and EPA criteria. The rule also provides guidance to contracting officers on the use of energy-savings performance contracts as alternatives to the traditional method of financing energy efficiency improvements.

##### 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