

Item VI—Past Performance Evaluation of Federal Prison Industries Contracts (FAR Case 2001–035)

This final rule requires agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers, to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically.

Item VII—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items (FAR Case 2000–009)

This final rule amends the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR 52.213–4(a)(2)(vi), 52.244–6 section and clause headings, and 52.247–64(a).

Dated: May 13, 2003.

Laura G. Smith,
Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–14 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 2001–14 are effective June 23, 2003, except for Items III, V and VIII which are effective May 22, 2003.

Dated: May 9, 2003.

Deidre A. Lee,
Director, Defense Procurement and Acquisition Policy.

Dated: May 5, 2003.

David A. Drabkin,
Deputy of Acquisition Policy, General Services Administration.

Dated: May 5, 2003.

Tom Luedtke,
Assistant 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, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53

[FAC 2001–14; FAR Case 1999–400; Item I]

RIN 9000–AI99

Federal Acquisition Regulation; Geographic Use of the Term “United States”

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 clarify the use of the term “United States” in the FAR, in accordance with the FAR Drafting Guide.

DATES: *Effective Date:* June 23, 2003.

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 Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–14, FAR case 1999–400.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to clarify the use of the term “United States,” when used in a geographic sense. The term “United States” is defined in FAR 2.101 to include the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in the appropriate part

or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This rule corrects and updates references to the United States throughout the FAR, including a new definition of “outlying areas” of the United States, a term that encompasses all outlying commonwealths, territories, and minor outlying islands.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 39230, July 27, 2001. No public comments were received. The Councils have agreed to convert the proposed rule to a final rule with only minor editorial changes.

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 rule simply standardizes terminology and clarifies existing meaning. This rule is not intended to make policy changes.

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, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,
Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53 is revised 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 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 by adding, in alphabetical order, the definitions “Contiguous United States (CONUS)”, “Customs territory of the United States”, and “Outlying areas”; by removing the definition “Possessions”; and by revising the definition “State and local taxes”. The added and revised text reads as follows:

2.101 Definitions.

* * * * *

Contiguous United States (CONUS) means the 48 contiguous States and the District of Columbia.

* * * * *

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

* * * * *

Outlying areas means—

- (1) *Commonwealths*. (i) Puerto Rico.
- (ii) The Northern Mariana Islands;
- (2) *Territories*. (i) American Samoa.
- (ii) Guam.
- (iii) U.S. Virgin Islands; and
- (3) *Minor outlying islands*. (i) Baker Island.
- (ii) Howland Island.
- (iii) Jarvis Island.
- (iv) Johnston Atoll.
- (v) Kingman Reef.
- (vi) Midway Islands.
- (vii) Navassa Island.
- (viii) Palmyra Atoll.
- (ix) Wake Atoll.

* * * * *

State and local taxes means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.303 [Amended]

■ 3. Amend section 3.303 in paragraph (e) by removing the comma after the word “States” and adding “and its outlying areas,” in its place.

■ 4. Amend section 3.801 by revising the definition “State” to read as follows:

3.801 Definitions.

* * * * *

State, as used in this section, means a State of the United States, the District of Columbia, an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

PART 4—ADMINISTRATIVE MATTERS

■ 5. Amend section 4.603 in paragraph (a)(1) by removing “The contracting officer shall insert” and adding “Insert” in its place; and by revising paragraph (b) to read as follows:

4.603 Solicitation provisions.

* * * * *

(b) Insert the provision at 52.204–5, Women-Owned Business (Other Than Small Business), in solicitations that—

- (1) Are not set aside for small business concerns;
- (2) Exceed the simplified acquisition threshold; and
- (3) Are for contracts that will be performed in the United States or its outlying areas.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 6. Amend section 5.202 by revising the first sentence of paragraph (a)(12) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *
(12) The proposed contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States and its outlying areas, and only local sources will be solicited. * * *

* * * * *

5.303 [Amended]

■ 7. Amend section 5.303 in paragraph (a)(2) by removing “or its possessions” and adding “and its outlying areas” in its place.

PART 6—COMPETITION REQUIREMENTS

■ 8. Amend section 6.302–3 by revising paragraph (b)(1)(v) to read as follows:

6.302–3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

* * * * *

(b) * * *
(1) * * *
(v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in—

(A) The United States or its outlying areas; or

(B) The United States, its outlying areas, or Canada.

* * * * *

6.401 [Amended]

■ 9. Amend section 6.401 in the first sentence of paragraph (b)(2) by removing

“, its possessions, or Puerto Rico” and adding “and its outlying areas” in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 10. Amend section 8.1100 by revising the last sentence to read as follows:

8.1100 Scope of subpart.

* * * It does not apply to motor vehicles leased outside the United States and its outlying areas.

8.1104 [Amended]

■ 11. Amend section 8.1104 in the introductory text by removing “The contracting officer shall insert” and adding “Insert” in its place; and in paragraph (d) by removing “(see 41 CFR 101–38.6)” and adding “(see subpart B of 41 CFR 102–34)” in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.102 [Amended]

■ 12. Amend section 9.102 in paragraph (a)(1) by removing “, its possessions, or Puerto Rico” and adding “or its outlying areas” in its place.

■ 13. Amend section 9.406–2 by adding an introductory paragraph; revising the introductory text of paragraph (a), and paragraphs (a)(4), (b)(1) introductory text, (b)(1)(iii), the first sentence in (b)(2), and (c) to read as follows:

9.406–2 Causes for debarment.

The debarring official may debar—

(a) A contractor for a conviction of or civil judgment for—

* * * * *

(4) Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)); or

* * * * *

(b)(1) A contractor, based upon a preponderance of the evidence for—

* * * * *

(iii) Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)).

* * * * *

(2) A contractor, based on a determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). * * *

(c) A contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

■ 14. Amend section 9.407–2 by revising paragraph (a)(5) to read as follows:

9.407–2 Causes for suspension.

(a) * * *

(5) Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558));

* * * * *

PART 14—SEALED BIDDING

■ 15. Revise section 14.203–1 to read as follows:

14.203–1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices must be transmitted as specified in 14.205 and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located outside the United States shall be sent by electronic data interchange or air mail if security classification permits.

PART 19—SMALL BUSINESS PROGRAMS

■ 16. Amend section 19.000 by revising paragraph (b) to read as follows:

19.000 Scope of part.

* * * * *

(b) This part, except for subpart 19.6, applies only in the United States or its outlying areas. Subpart 19.6 applies worldwide.

■ 17. Amend section 19.001 by revising the definition “Concern” to read as follows:

19.001 Definitions.

* * * * *

Concern means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas

and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. “Concern” includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101), include any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

* * * * *

19.101 [Amended]

■ 18. In section 19.101, amend the last sentence of the definition “Affiliates” by removing “inside the United States” and adding “in the United States or its outlying areas” in its place.

■ 19. Amend section 19.102 by revising the introductory text of paragraph (f), (f)(1), and (f)(7) to read as follows:

19.102 Size standards.

* * * * *

(f) Any concern submitting a bid or offer in its own name, other than on a construction or service contract, that proposes to furnish an end product it did not manufacture (a “nonmanufacturer”), is a small business if it has no more than 500 employees, and—

(1) Except as provided in paragraphs (f)(4) through (f)(7) of this section, in the case of Government acquisitions set-aside for small businesses, furnishes in the performance of the contract, the product of a small business manufacturer or producer. The end product furnished must be manufactured or produced in the United States or its outlying areas. The term “nonmanufacturer” includes a concern that can, but elects not to, manufacture or produce the end product for the specific acquisition. For size determination purposes, there can be only one manufacturer of the end product being acquired. The manufacturer of the end product being acquired is the concern that, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into the end product. However, see the limitations on subcontracting at 52.219–14 that apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards.

* * * * *

(7) The SBA provides for an exception to the nonmanufacturer rule if—

(i) The procurement of a manufactured end product processed under the procedures set forth in part 13—

(A) Is set aside for small business; and
(B) Is not anticipated to exceed \$25,000; and

(ii) The offeror supplies an end product that is manufactured or produced in the United States or its outlying areas.

* * * * *

■ 20. Amend section 19.307 by revising paragraphs (a)(1) and (c) to read as follows:

19.307 Solicitation provisions.

(a)(1) Insert the provision at 52.219–1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

* * * * *

(c) When contracting by sealed bidding, insert the provision at 52.219–2, Equal Low Bids, in solicitations when the contract will be performed in the United States or its outlying areas.

■ 21. Amend section 19.702 by revising paragraph (b)(3) to read as follows:

19.702 Statutory requirements.

* * * * *

(b) * * *

(3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas; or

* * * * *

■ 22. Amend section 19.708 by—

■ a. Revising the introductory text of paragraph (a) and (a)(2);

■ b. Removing from the first sentence of paragraph (b)(1) the words “The contracting officer shall, when contracting by negotiation, insert” and adding “Insert” in its place; and

■ c. Removing from paragraph (b)(2) “The contracting officer shall insert” and adding “Insert” in its place. The revised text reads as follows:

19.708 Contract clauses.

(a) Insert the clause at 52.219–8, Utilization of Small Business Concerns, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold unless—

* * * * *

(2) The contract, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas.

* * * * *

■ 23. Amend section 19.1202–2 by revising paragraph (b)(4) to read as follows:

19.1202–2 Applicability.

* * * * *

(b) * * *

(4) Contract actions that will be performed entirely outside of the United States and its outlying areas.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.102–2 [Amended]

■ 24. Amend section 22.102–2 in the first sentence of paragraph (b) by adding “U.S.” before the word “Virgin”.

■ 25. Amend section 22.103–1 by revising the introductory text of the definition “Normal workweek” to read as follows:

22.103–1 Definition.

Normal workweek, as used in this subpart, means, generally, a workweek of 40 hours. Outside the United States and its outlying areas, a workweek longer than 40 hours is considered normal if—

* * * * *

■ 26. Amend section 22.202 by revising the introductory paragraph to read as follows:

22.202 Contract clause.

Insert the clause at 52.222–3, Convict Labor, in solicitations and contracts above the micro-purchase threshold, when the contract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands; unless—

* * * * *

■ 27. Revise section 22.305 to read as follows:

22.305 Contract clause.

Insert the clause at 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, do not include the clause in solicitations and contracts—

(a) Valued at or below the simplified acquisition threshold;

(b) For commercial items;

(c) For transportation or the transmission of intelligence;

(d) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in

the Outer Continental Shelf Lands Act (43 U.S.C. 1331) (29 CFR 5.15);

(e) For work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see subpart 22.6);

(f) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or

(g) Exempt under regulations of the Secretary of Labor (29 CFR 5.15).

■ 28. Revise section 22.603 to read as follows:

22.603 Applicability.

The requirements in 22.602 apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of supplies that—

(a) Will be performed in the United States, Puerto Rico, or the U.S. Virgin Islands;

(b) Exceed or may exceed \$10,000; and

(c) Are not exempt under 22.604.

■ 29. Amend section 22.604–2 by revising paragraph (a)(2) to read as follows:

22.604–2 Regulatory exemptions.

(a) * * *

(2) Supplies manufactured outside the United States, Puerto Rico, and the U.S. Virgin Islands.

* * * * *

■ 30. Amend section 22.801 by revising the definition “United States” to read as follows:

22.801 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

■ 31. Amend section 22.1001 by revising the definition “United States” to read as follows:

22.1001 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*) but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession in a foreign country (29 CFR 4.112).

* * * * *

■ 32. Amend section 22.1408 by revising the introductory text of paragraph (a) and (a)(1) to read as follows:

22.1408 Contract clause.

(a) Insert the clause at 52.222–36, Affirmative Action for Workers with Disabilities, in solicitations and contracts that exceed or are expected to exceed \$10,000, except when—

(1) Both the performance of the work and the recruitment of workers will occur outside the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island; or

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 33. Amend section 23.200 by revising paragraph (b) to read as follows:

23.200 Scope.

* * * * *

(b) This subpart applies to acquisitions in the United States and its outlying areas. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

■ 34. Amend section 23.501 by revising the introductory paragraph and paragraphs (a), (b), and (c); and in paragraph (d) by removing “Contracts by” and adding “By” in its place. The revised text reads as follows:

23.501 Applicability.

This subpart applies to contracts, including contracts with 8(a) contractors under FAR subpart 19.8 and modifications that require a justification and approval (see subpart 6.3), except contracts—

(a) At or below the simplified acquisition threshold; however, the requirements of this subpart apply to all contracts of any value awarded to an individual;

(b) For the acquisition of commercial items (see part 12);

(c) Performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;

* * * * *

■ 35. Revise section 23.505 to read as follows:

23.505 Contract clause.

Except as provided in 23.501, insert the clause at 52.223–6, Drug-Free Workplace, in solicitations and contracts.

■ 36. Amend section 23.804 by revising the introductory paragraph to read as follows:

23.804 Contract clauses.

Except for contracts that will be performed outside the United States and its outlying areas, insert the clause at:

* * * * *

■ 37. Amend section 23.903 by revising paragraph (b)(2) to read as follows:

23.903 Applicability.

* * * * *

(b) * * *
(2) Contractor facilities located outside the United States and its outlying areas.

■ 38. Amend section 23.906 by revising paragraph (a)(2)(v) to read as follows:

23.906 Requirements.

(a) * * *
(2) * * *
(v) Are not located in the United States and its outlying areas.

* * * * *

■ 39. Revise section 23.1002 to read as follows:

23.1002 Applicability.

The requirements of this subpart apply to facilities owned or operated by an agency in the customs territory of the United States.

PART 25—FOREIGN ACQUISITION

■ 40. Amend section 25.003 by removing the definition “Customs territory of the United States”; and revising the definition “United States” to read as follows:

25.003 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

■ 41. Amend section 26.300 by revising paragraph (b) to read as follows:

26.300 Scope of subpart.

* * * * *

(b) This subpart does not pertain to contracts performed entirely outside the United States and its outlying areas.

PART 28—BONDS AND INSURANCE

28.202 [Amended]

■ 42. Amend section 28.202 in paragraph (a)(1) by removing “, its possessions, or Puerto Rico” and adding “or its outlying areas” in its place.

■ 43. Amend section 28.203–2 by revising the first sentence of paragraph (b)(4) and paragraph (c)(3)(i) to read as follows:

28.203–2 Acceptability of assets.

* * * * *

(b) * * *
(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in paragraph (c)(3)(iii) of this subsection, and located in the United States or its outlying areas. * * *

* * * * *

(c) * * *
(3) * * *
(i) Real property located outside the United States and its outlying areas.

* * * * *

28.301 [Amended]

■ 44. Amend section 28.301 in the introductory text by removing “be required to”; and in the third sentence of paragraph (b) by removing “, its possessions, and Puerto Rico” and adding “and its outlying areas” in its place.

■ 45. Amend section 28.310 by revising the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

28.310 Contract clause for work on a Government installation.

(a) Insert the clause at 52.228–5, Insurance—Work on a Government Installation, in solicitations and contracts if a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold, and the contract will require work on a Government installation, unless—

* * * * *

(2) All work on the Government installation will be performed outside the United States and its outlying areas.

* * * * *

PART 29—TAXES

■ 46. Amend section 29.202 by revising paragraph (b) to read as follows:

29.202 General exemptions.

* * * * *

(b) Shipment for export to a foreign country or an outlying area of the United States. Shipment must occur within 6 months of the time title passes to the Government. When the exemption is claimed, the words “for export” must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export (see 26 CFR 48.4221–3).

* * * * *

■ 47. Revise section 29.401–1 to read as follows:

29.401–1 Indefinite-delivery contracts for leased equipment.

Insert the clause at 52.229–1, State and Local Taxes, in solicitations and contracts for leased equipment when—
(a) A fixed-price indefinite-delivery contract is contemplated;

(b) The contract will be performed wholly or partly in the United States or its outlying areas; and

(c) The place or places of delivery are not known at the time of contracting.

■ 48. Amend section 29.401–3 by revising paragraph (a)(1) to read as follows:

29.401–3 Federal, State, and local taxes.

(a) * * *

(1) The contract is to be performed wholly or partly in the United States or its outlying areas;

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–46 [Amended]

■ 49. Amend section 31.205–46 in paragraph (a)(2)(i) by removing “conterminous 48” and adding “contiguous” in its place; and in paragraph (a)(2)(ii) by removing “The Commonwealth of Puerto Rico, and territories and possessions” and adding “and outlying areas” in its place.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.014 [Amended]

■ 50. Amend section 35.014 in paragraph (d)(1) by removing from the quoted text “States” and adding “States or its outlying areas” in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 51. Amend section 36.103 by revising paragraph (a) to read as follows:

36.103 Methods of contracting.

(a) The contracting officer shall use sealed bid procedures for a construction contract if the conditions in 6.401(a) apply, unless the contract will be performed outside the United States and its outlying areas. (See 6.401(b)(2).)

* * * * *

■ 52. Revise section 36.609–4 to read as follows:

36.609–4 Requirements for registration of designers.

Insert the clause at 52.236–25, Requirements for Registration of Designers, in architect-engineer

contracts, except that it may be omitted when the design will be performed—

(a) Outside the United States and its outlying areas; or

(b) In a State or outlying area of the United States that does not have registration requirements for the particular field involved.

■ 53. Amend section 36.702 by revising paragraph (a) to read as follows:

36.702 Forms for use in contracting for architect-engineer services.

(a) Contracting officers must use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services will be performed in the United States or its outlying areas.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1402 Volume movements within the contiguous United States.

■ 54. Revise the heading of section 42.1402 to read as set forth above.

■ 55. Amend section 42.1404–1 by revising paragraph (c) to read as follows:

42.1404–1 Parcel post eligible shipments.

* * * * *

(c)(1) When a contractor uses its own label to ship to a post office servicing military and other agency consignees outside the customs territory of the United States, the contractor shall stamp or imprint the parcel immediately above the label in ¼-inch block letters with the—

(i) Name of the agency; and
(ii) Words “Official Mail—Contents for Official Use—Exempt from Customs Requirements.”

(2) This marking permits identification and expedites handling within the postal system, but the contractor must pay postage if—

(i) Required by the contract; or
(ii) The contract provides for reimbursement for the cost of postage.

* * * * *

PART 45—GOVERNMENT PROPERTY

■ 56. Amend section 45.601 by revising the definition “Public body” to read as follows:

45.601 Definitions.

* * * * *

Public body means any State, any outlying area of the United States, any political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

PART 47—TRANSPORTATION

47.001 [Amended]

■ 57. Amend section 47.001 by removing the definition “CONUS” or “Continental United States”.

47.302 [Amended]

■ 58. Amend section 47.302 in the first sentence of paragraph (a) by removing “Continental” and adding “Contiguous” in its place.

47.304–1 [Amended]

■ 59. Amend section 47.304–1 in paragraphs (g)(1) and (g)(2) by removing “the continental United States” and adding “CONUS” in their place.

47.304–3 [Amended]

■ 60. Amend section 47.304–3 in the introductory text of paragraph (a) by removing “the United States” and adding “CONUS” in its place.

■ 61. Amend section 47.401 by revising the definitions “United States” and “U.S.-flag air carrier” to read as follows:

47.401 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, and outlying areas of the United States.

U.S.-flag air carrier means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 41102).

■ 62. Revise section 47.402 to read as follows:

47.402 Policy.

Federal employees and their dependents, consultants, contractors, grantees, and others must use U.S.-flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, if available (section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 63. Amend section 52.203–12 by revising the date of the clause; and in paragraph (a) by revising the definition “State” to read as follows:

52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

* * * * *

Limitation on Payments to Influence Certain Federal Transactions (June 2003)

(a) * * *

State, as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States, an

agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

* * * * *

■ 64. Amend section 52.212–3 by revising the date of provision, the introductory text of paragraph (c), (f)(1), and (g)(1)(i) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (June 2003)

* * * * *

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

* * * * *

(f) * * *

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

* * * * *

(g)(1) * * *

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act.”

* * * * *

■ 65. Amend section 52.213–4 by revising the date of clause and paragraphs (a)(1)(i), (a)(1)(iv) and the introductory text of paragraph (b)(1)(viii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (June 2003)

(a) * * *

(1) * * *

(i) 52.222–3, Convict Labor (June 2003) (E.O. 11755).

* * * * *

(iv) 52.225–13, Restrictions on Certain foreign Purchases (June 2003) (E.O.'s 12722, 12724, 13059, 13067, 13121, 13129).

* * * * *

(b) * * *

(1) * * *

(viii) 52.225–1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a–10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

* * * * *

■ 66. Amend section 52.219–5 by revising the date of the clause, paragraph (c), and Alternate II to read as follows:

52.219–5 Very Small Business Set-Aside.

* * * * *

Very Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* A very small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas.

(End of clause)

* * * * *

Alternate II (June 2003). As prescribed in 19.905(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A very small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by domestic firms in the United States or its outlying areas.

■ 67. Amend section 52.219–6 by revising the date of the clause and paragraph (c) to read as follows:

52.219–6 Notice of Total Small Business Set-Aside.

* * * * *

Notice of Total Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

* * * * *

■ 68. Amend section 52.219–7 by revising the date of clause and paragraph (c) to read as follows:

52.219–7 Notice of Partial Small Business Set-Aside.

* * * * *

Notice of Partial Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

* * * * *

■ 69. Amend section 52.219–18 by revising the date of clause and paragraph (d)(1) to read as follows:

52.219–18 Notification of Competition Limited to Eligible 8(a) Concerns.

* * * * *

Notification of Competition Limited to Eligible 8(a) Concerns (June 2003)

* * * * *

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

* * * * *

■ 70. Amend section 52.219–23 by revising the date of clause; removing from paragraph (a) the definition “United States”; and by revising paragraph (d)(2) and Alternate I to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (June 2003)

* * * * *

(d) * * *

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (June 2003). As prescribed in 19.1104, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

* * * * *

■ 71. Revise section 52.222–3 to read as follows:

52.222–3 Convict Labor.

As prescribed in 22.202, insert the following clause:

Convict Labor (June 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

■ 72. Revise section 52.222–29 to read as follows:

52.222–29 Notification of Visa Denial.

As prescribed in 22.810(g), insert the following clause:

Notification of Visa Denial (June 2003)

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any

applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.
(End of clause)

■ 73. Amend section 52.223-13 by revising the date of the provision and paragraph (b)(2)(v) to read as follows:

52.223-13 Certification of Toxic Chemical Release Reporting.

* * * * *

Certification of Toxic Chemical Release Reporting (June 2003)

* * * * *

(b) * * *

(2) * * *

[] (v) The facility is not located in the United States or its outlying areas.

(End of provision)

■ 74. Amend section 52.223-14 by revising the date of the clause, and the introductory text of paragraph (b) and paragraph (b)(5) to read as follows:

52.223-14 Toxic Chemical Release Reporting.

* * * * *

Toxic Chemical Release Reporting (June 2003)

* * * * *

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

* * * * *

(5) The facility is not located in the United States or its outlying areas.

* * * * *

■ 75. Amend section 52.225-1 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225-1 Buy American Act—Supplies.

* * * * *

Buy American Act—Supplies (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 76. Amend section 52.225-2 by revising the date of the provision and paragraph (a) to read as follows:

52.225-2 Buy American Act Certificate.

* * * * *

Buy American Act Certificate (June 2003)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Supplies."

* * * * *

■ 77. Amend section 52.225-3 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225-3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act.

* * * * *

Buy American Act—North American Free Trade Agreement—Israeli Trade Act (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 78. Amend section 52.225-4 by revising the date of the provision and paragraph (a) to read as follows:

52.225-4 Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate.

* * * * *

Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate (June 2003)

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act."

* * * * *

■ 79. Amend section 52.225-5 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225-5 Trade Agreements.

* * * * *

Trade Agreements (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 80. Amend section 52.225-9 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225-9 Buy American Act—Construction Materials.

* * * * *

Buy American Act—Construction Materials (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 81. Amend section 52.225-11 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

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

* * * * *

Buy American Act—Construction Materials Under Trade Agreements (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

52.225-13 [Amended]

■ 82. Amend section 52.225-13 by revising the date of the clause to read "(June 2003)"; and in the first sentence of paragraph (a) by removing "States" and adding "States and its outlying areas" in its place.

■ 83. Amend section 52.228-3 by revising the introductory paragraph to read as follows:

52.228-3 Workers' Compensation Insurance (Defense Base Act).

As prescribed in 28.309(a), insert the following clause:

* * * * *

■ 84. Amend section 52.228-4 by revising the introductory paragraph to read as follows:

52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.

As prescribed in 28.309(b), insert the following clause:

* * * * *

■ 85. Amend section 52.229-1 by revising the introductory text to read as follows:

52.229-1 State and Local Taxes.

As prescribed in 29.401-1, insert the following clause:

* * * * *

- 86. Amend section 52.229-6 by—
- a. Revising the date of the clause;
- b. Revising paragraph (a);
- c. Removing the designation of paragraph (b);
- d. Adding a new paragraph (b) introductory text; and
- e. Removing “, as used in this clause,” from the definition “Contract date”; revising the definition “Country concerned”; and removing “, as used in this clause,” from the definitions “Tax” and “taxes”, “All applicable taxes and duties”, “After-imposed tax”, “After-relieved tax”, and “Excepted tax”. The added and revised text reads as follows:

52.229-6 Taxes—Foreign Fixed-Price Contracts.

* * * * *

Taxes—Foreign Fixed-Price Contracts (June 2003)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

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

* * * * *

Country concerned means any country, other than the United States and its outlying areas, in which expenditures under this contract are made.

* * * * *

- 87. Revise section 52.236-25 to read as follows:

52.236-25 Requirements for Registration of Designers.

As prescribed in 36.609-4, insert the following clause:

Requirements for Registration of Designers (June 2003)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

(End of clause)

- 88. Revise section 52.242-12 to read as follows:

52.242-12 Report of Shipment (REPSHIP).

As prescribed in 42.1406-2, insert the following clause:

Report of Shipment (REPSHIP) (June 2003)

(a) *Definition.* *Domestic destination*, as used in this clause, means—

(1) A destination within the contiguous United States; or

(2) If shipment originates in Alaska or Hawaii, a destination in Alaska or Hawaii, respectively.

(b) Unless otherwise directed by the Contracting Officer, the Contractor shall—

(1) Send a prepaid notice of shipment to the consignee transportation officer—

(i) For all shipments of—

(A) Classified material, protected sensitive, and protected controlled material;

(B) Explosives and poisons, classes A and B;

(C) Radioactive materials requiring the use of a III bar label; or

(ii) When a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic destination (other than a port for export);

(2) Transmit the notice by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment; and

(3) Send, to the receiving transportation officer, the Government bill of lading, commercial bill of lading or letter or other document containing the following information and prominently identified as a “Report of Shipment” or “REPSHIP FOR T.O.”

Message Example:

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TENN.
SHIPPED YOUR DEPOT 1981 JUN 1 540
CTNS MENS COTTON TROUSERS, 30,240
LB, 1782 CUBE, VIA XX-YY*
IN CAR NO. XX 123456*-GBL***-
C98000031**** CONTRACT DLA
ETA*****JUNE 5 JONES & CO., JERSEY
CITY, N.J.

* Name of rail carrier, trucker, or other carrier.

** Vehicle identification.

*** Government bill of lading.

**** If not shipped by GBL, identify lading document and state whether paid by contractor.

***** Estimated time of arrival.

(End of clause)

- 89. Amend section 52.245-2 by revising the date and paragraph (1) of the clause; revising the date of Alternate II and amending paragraph (c)(5) of Alternate II by removing “States” and adding “States or its outlying areas” in its place. The revised text reads as follows:

52.245-2 Government Property (Fixed-Price Contracts).

* * * * *

Government Property (Fixed-Price Contracts) (June 2003)

* * * * *

(l) *Overseas contracts.* If this contract is to be performed outside of the United States and its outlying areas, the words “Government” and “Government-furnished” (wherever they appear in this clause) shall be

construed as “United States Government” and “United States Government-furnished,” respectively.

(End of clause)

* * * * *

Alternate II (June 2003) * * *

* * * * *

- 90. Amend section 52.245-4 by revising the date of the clause and paragraph (e) to read as follows:

52.245-4 Government-Furnished Property (Short Form).

* * * * *

Government-Furnished Property (Short Form) (June 2003)

* * * * *

(e) If this contract is to be performed outside the United States and its outlying areas, the words “Government” and “Government-furnished” (wherever they appear in this clause) shall be construed as “United States Government” and “United States Government-furnished,” respectively.

(End of clause)

- 91. Amend section 52.245-5 by revising the date of the clause; amending paragraph (1) by removing “of America, its territories, or possessions” and adding “and its outlying areas” in its place; by revising the date of Alternate I; and amending paragraph (c)(5) of Alternate I by removing “States” and adding “States or its outlying areas” in its place. The revised text reads as follows:

52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

* * * * *

Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (June 2003)

* * * * *

(End of clause)

Alternate I (June 2003)

* * * * *

52.245-11 [Amended]

- 92. Amend section 52.245-11 by revising the date of Alternate I to read “(June 2003)”; and amending paragraph (c)(6) of Alternate I by removing “States” and adding “States or its outlying areas” in its place.

52.245-15 [Amended]

- 93. Amend section 52.245-15 by revising the date of the clause to read “(June 2003)”; and amending paragraph (b) by removing “States” and adding “States or its outlying areas” in its place.

52.246-17 [Amended]

- 94. Amend section 52.246-17 by revising the date of the clause to read

“(June 2003)” and amending paragraph (c)(3)(ii)(C) by removing “continental” and adding “contiguous” in its place.

■ 95. Revise section 52.247–47 to read as follows:

52.247–47 Evaluation—F.o.b. Origin.

As prescribed in 47.305–3(f)(2), insert the following provision. When it is appropriate to use methods other than land transportation in evaluating offers; e.g., air, pipeline, barge, or ocean tanker, modify the provision accordingly.

Evaluation—F.o.b. Origin (June 2003)

(a) The Government normally uses land methods of transportation by regulated common carrier for shipment within the contiguous United States.

(b) To evaluate offers, the Government will consider only these methods to establish the cost of transportation between offeror's shipping point and destination (tentative or firm, whichever is applicable) in the contiguous United States.

(c) This transportation cost will be added to the offer price to determine the Government's overall cost.

(d) When tentative destinations are indicated, the Government will use them only for evaluation purposes. The Government has the right to use any other means of transportation or any other destination at the time of shipment.

(End of provision)

■ 96. Amend section 52.247–55 by revising the introductory text, the date of the clause, and paragraphs (a) and (b) of the clause to read as follows:

52.247–55 F.o.b. Point for Delivery of Government-Furnished Property.

As prescribed in 47.305–12(a)(2), insert the following clause:

F.o.b. Point for Delivery of Government-Furnished Property (June 2003)

(a) Unless otherwise specified in this solicitation, the Government will deliver any Government-furnished property for use within the contiguous United States or Canada to a point specified by the Contractor in the offer. If the Government makes delivery by railroad, the f.o.b. point will be private siding, Contractor's plant. If the Contractor's plant is not served by rail, the f.o.b. point will be railroad cars in the same or nearest city having rail service. The Government may choose the mode of transportation and the carriers and will bear the cost of all line-haul transportation to the specified destination.

(b) If the destination of the Government-furnished property is a Contractor's plant located outside the contiguous United States or Canada, the f.o.b. point for Government delivery of Government-furnished property will be a Contractor-specified location in the contiguous United States. If the Contractor fails to name a point, the Government will select as the f.o.b. point the port city in the contiguous United States nearest to the Government-furnished property that has regular commercial water transportation services to the offshore port nearest the Contractor's plant.

* * * * *

■ 97. Amend section 52.247–63 by revising the date of the clause and paragraphs (a) and (c) to read as follows:

52.247–63 Preference for U.S.—Flag Air Carriers.

* * * * *

Preference for U.S.—Flag Air Carriers (June 2003)

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

International air transportation means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-flag air carrier means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

* * * * *

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

* * * * *

PART 53—FORMS

53.228 [Amended]

■ 98. Amend section 53.228 in paragraph (e) by removing “(Rev. 6/96)” and adding “(Rev. 6/03)” in its place.

■ 99. Revise section 53.301–28 to read as follows:

53.301–28 Affidavit of Individual Surety.

BILLING CODE 6820-EP-P

AFFIDAVIT OF INDIVIDUAL SURETY
(See instructions on reverse)

OMB No.: 9000-0001

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (MVA), Office of Acquisition Policy, GSA, Washington, DC 20405.

STATE OF	SS.
COUNTY OF	

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME (First, Middle, Last) (Type or Print)	2. HOME ADDRESS (Number, Street, City, State, ZIP Code)
3. TYPE AND DURATION OF OCCUPATION	4. NAME AND ADDRESS OF EMPLOYER (If Self-employed, so State)
5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (If any) (Number, Street, City, State, ZIP Code)	6. TELEPHONE NUMBER HOME - BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate (Include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)

(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE	11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where appropriate)	
12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:		
a. DATE OATH ADMINISTERED MONTH DAY YEAR		b. CITY AND STATE (Or other jurisdiction)
c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH (Type or print)	d. SIGNATURE	e. MY COMMISSION EXPIRES

Official
Seal

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 28 (REV. 6/2003)
Prescribed by GSA-FAR (48 CFR) 53.228(e)

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts must complete and submit this form with the bond. (See 48 CFR 28.203, 53.228(e).) The surety must have the completed form notarized.
2. No corporation, partnership, or other unincorporated association or firm, as such, is acceptable as an individual surety. Likewise, members of a partnership are not acceptable as sureties on bonds that a partnership or an association, or any co-partner or member thereof, is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond that this affidavit supports.
3. United States citizenship is a requirement for individual sureties for contracts and bonds when the contract is awarded in the United States. However, when the Contracting Officer is located in an outlying area or a foreign country, the individual surety is only required to be a permanent resident of the area or country in which the contracting officer is located.
4. All signatures of the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person must sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of a firm, partnership, or joint venture, or an officer of the corporation involved.