

**53.236-1 [Amended]**

■ 8. Amend section 53.236-1 by removing paragraph (a) and redesignating paragraphs (b), (c), (d), (e), (f), and (g) as (a), (b), (c), (d), (e), and (f), respectively; in newly redesignated paragraph (a) by removing “36.701(e)” and adding “36.701(d)” in its place; in newly redesignated paragraph (d)(2) by removing “36.701(b)” and adding “36.701(a)” in its place; in newly redesignated paragraph (e)(2) by removing “36.701(c)” and adding “36.701(b)” in its place; and in newly redesignated paragraph (f) by removing “36.701(d)” and adding “36.701(c)” in its place.

**53.301-1417 [Removed]**

■ 9. Remove section 53.301-1417.

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 5, 12, 13, 14, 17, 19, 22,  
25, 33, and 52**

[FAC 2001-25; FAR Case 2003-016; Item II]

RIN 9000-AJ87

**Federal Acquisition Regulation; Free  
Trade Agreements-Chile and  
Singapore, and Trade Agreements  
Thresholds**

**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 to convert to a final rule, with changes, an interim rule amending the Federal Acquisition Regulation (FAR). The interim rule implemented new Free Trade Agreements with Chile and Singapore, as approved by Congress (Public Laws 108-77 and 108-78). The interim rule also implemented new dollar thresholds for application of trade agreements.

**DATES:** *Effective Date:* October 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (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 2001-25, FAR case 2003-016.

**SUPPLEMENTARY INFORMATION:****A. Background**

The Free Trade Agreements with Chile and Singapore waive the applicability of the Buy American Act for some foreign supplies and construction materials from Chile and Singapore, and specify procurement procedures designed to ensure fairness, applicable to the acquisition of supplies and services (see the Government Procurement provisions at Chapters 9 and 13, respectively, of the trade agreements). The interim rule was published in the **Federal Register** at 69 FR 1050, January 7, 2004. One public comment was received. To implement Section 106 of the authorizing acts, the interim rule added the statement “United States law will apply to resolve any claim of breach of contract.” to the Buy American Act/Trade Agreements clauses at FAR 52.225-3, 52.225-5, and 52.225-11. The Department of Justice noted that Section 106 of each authorizing act applies to all contracts entered into by any agency of the United States. Therefore, the Department of Justice recommended that the statement be a separate clause, included in every contract. The Councils concur. The final rule removes the statement of applicability of U.S. law from FAR clauses 52.225-3, 52.225-5, and 52.225-11, and creates a new clause at FAR 52.233-4, *Applicable Law for Breach of Contract Claim*, to include the statement of applicability of U.S. law in every contract subject to the FAR.

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.* Although the interim rule opened up Government procurement to the products of Chile, there will not be any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions under

\$100,000 that are set aside for small businesses are exempt. We did not receive any comments on this issue from small business concerns or other interested parties.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000-0130, 9000-0025, and 9000-0141, respectively.

**List of Subjects in 48 CFR Parts 5, 12,  
13, 14, 17, 19, 22, 25, 33, and 52**

Government procurement.

Dated: September 28, 2004.

**Ralph J. De Stefano,**

*Acting Director, Contract Policy Division.*

**Interim Rule Adopted as Final with  
Changes**

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 5, 12, 13, 14, 17, 19, 22, 25, and 52, which was published in the **Federal Register** at 69 FR 1050, January 7, 2004, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 5, 12, 13, 14, 17, 19, 22, 25, 33, and 52 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 33—PROTESTS, DISPUTES,  
AND APPEALS**

■ 2. Revise the section heading and text of section 33.215 to read as follows:

**33.215 Contract clauses.**

(a) Insert the clause at 52.233-1, *Disputes*, in solicitations and contracts, unless the conditions in 33.203(b) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer shall use the clause with its Alternate I.

(b) Insert the clause at 52.233-4 in all solicitations and contracts.

**PART 52—SOLICITATION PROVISIONS  
AND CONTRACT CLAUSES**

■ 3. Amend section 52.212-5 by-

■ a. Revising the date of the clause and paragraph (a); and

■ b. Removing “(Jan 2004)” from paragraph (b)(23)(i) of the clause and adding “(OCT 2004)” in its place; and removing “(June 2004)” from paragraph (b)(24) of the clause and adding “(OCT 2004)” in its place. The revised text reads as follows:

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

\* \* \* \* \*

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS-COMMERCIAL ITEMS (OCT 2004)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

\* \* \* \* \*

■ 4. Amend section 52.213-4 by revising the date of the clause; and by adding paragraph (a)(1)(vi) 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) (OCT 2004)

(a) \* \* \*

(1) \* \* \*

(vi) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

\* \* \* \* \*

**52.225-3 [Amended]**

■ 5. Amend section 52.225-3 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (d) of the clause.

**52.225-5 [Amended]**

■ 6. Amend section 52.225-5 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (c) of the clause.

**52.225-11 [Amended]**

■ 7. Amend section 52.225-11 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (e) of the clause.

■ 8. Add section 52.233-4 to read as follows:

**52.233-4 Applicable Law for Breach of Contract Claim.**

As prescribed in 33.215(b), insert the following clause:

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 7, 11, 13, 15**

[FAC 2001-25; FAR Case 2003-025; Item III]

RIN 9000-AK03

**Federal Acquisition Regulation; Telecommuting for Federal Contractors**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 1428 of the Services Acquisition Reform Act of 2003, Title XIV of Public Law 108-136, Authorization of

Telecommuting for Federal Contractors.

**DATES:** *Effective Date:* October 5, 2004.

*Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 6, 2004 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2001-25, FAR case 2003-025, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR Case number to submit comments.

- E-mail: [farcase.2003-025@gsa.gov](mailto:farcase.2003-025@gsa.gov). Include FAC 2001-25, FAR case 2003-025, in the subject line of the message.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2001-25, FAR case 2003-025, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAC 2001-25, FAR case 2003-025.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108-136). Section 1428 requires the amendment of the FAR to permit telecommuting by employees of Federal Government contractors in the performance of contracts entered into with executive agencies. Specifically, Section 1428 states that solicitations for the acquisition of property or services may not include any requirement or evaluation criteria that would render an offeror ineligible to enter into a contract because it proposes to permit its employees to telecommute, unless the contracting officer determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The contracting officer must document in writing the basis for the determination. Also, the solicitation cannot contain any evaluation criteria that would reduce the scoring of an offer because the offeror proposes to permit its employees to telecommute, unless the contracting officer determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is allowed. The contracting officer must document in writing the basis for this determination as well.

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 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 by not automatically prohibiting telecommuting, the Government will be making it easier for small businesses to recruit and maintain employees for work on Government contracts. Until now, there has been no Governmentwide policy or practice concerning contractor employee telecommuting. This rule will not be a major change, but instead a small