

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 25**

[FAC 2001-07; FAR Case 2001-002; Item III]

RIN 9000-AJ37

**Federal Acquisition Regulation;
European Union Trade Sanctions**

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 correct the clause prescription for the clauses that implement European Union trade sanctions by specifically exempting solicitations issued and contracts awarded by the Department of Defense.

DATES: Effective Date: May 15, 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 2001-07, FAR case 2001-002.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule revises FAR 25.1103(c)(2)(i) to specifically exclude solicitations issued and contracts awarded by DoD from the clause prescription for the use of FAR clauses 52.225-15, Sanctioned European Union Country End Products, and 52.225-16, Sanctioned European Union Country Services. FAR 25.600 clearly states that European Union trade sanctions do not apply to the Department of Defense.

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 part 25 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 2001-07, FAR case 2001-002), 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 Part 25

Government procurement.

Dated: April 23, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 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).

2. Amend section 25.1103 by revising paragraph (c)(2)(i) to read as follows:

25.1103 Other provisions and clauses.

* * * * *

(c) * * *

(2) * * *

(i) Solicitations issued and contracts awarded by—

(A) A contracting activity located outside of the United States, provided the supplies will be used or the services will be performed outside of the United States; or

(B) The Department of Defense;

* * * * *

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 12 and 52**

[FAC 2001-07; Item IV]

**Federal Acquisition Regulation;
Technical Amendments**

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

DATES: *Effective Date:* May 15, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 2001-07, Technical Amendments.

List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: April 23, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12 and 52 as set forth below:

1. The authority citation for 48 CFR parts 12 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 12—ACQUISITION OF
COMMERCIAL ITEMS****12.301 [Amended]**

2. Amend section 12.301 at the end of paragraphs (b)(1) and (b)(2) by removing the semi-colons and adding a period in their places; and at the end of paragraph (b)(3) by removing “; and” and adding a period in its place.

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

3. Amend section 52.214-20 by revising the introductory text of Alternates I and II to read as follows:

52.214-20 Bid Samples.

* * * * *

Alternate I (May 2002). As prescribed in 14.201-6(o)(2)(i), insert the following Alternate I:

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Alternate II (May 2002). As prescribed in 14.201–6(o)(2)(ii), insert the following Alternate II:

* * * * *

52.244–6 [Amended]

4. Amend section 52.244–6 by revising the date of the clause to read “(May 2002)”; removing from paragraph (c)(1)(ii) “(Feb 1999)” and adding “(Apr 2002)” in its place; and removing from paragraph (c)(1)(v) “Flagged” and adding “Flag” in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National

Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–07 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–07 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–07

Item	Subject	FAR case	Analyst
I	Preference for Performance-Based Contracting	2000–307	Wise.
II	Revisions to Balance Of Payments Program	1999–616	Davis.
III	European Union Trade Sanctions	2001–002	Davis.
IV	Technical Amendments.		

Item I—Preference for Performance-Based Contracting (FAR Case 2000–307)

This final rule converts the interim rule published as Item I of FAC 97–25 at 66 FR 22082, May 2, 2001, to a final rule with an amendment at FAR 7.105. The rule implements Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). The rule affects contracting officers that buy services by explicitly establishing a preference for performance-based contracts or task orders. Guidance for performance-based contracting is available at the following websites:

<http://www.arnet.gov/Library/OFPP/BestPractices/>,

<http://oamweb.osec.doc.gov/pbsc/index.html>, or

[http://www.gsa.gov/Portal/content/pubs_content.jsp?](http://www.gsa.gov/Portal/content/pubs_content.jsp?contentOID=119969&contentType=1008&PMVP=1)

[contentOID=119969&contentType=1008&PMVP=1.](http://www.gsa.gov/Portal/content/pubs_content.jsp?contentOID=119969&contentType=1008&PMVP=1)

Item II—Revisions to Balance of Payments Program (FAR Case 1999–616)

This final rule amends the FAR by removing Subpart 25.3, Balance of Payments Program, and making conforming changes to FAR Parts 13, 25, and 52. This revision will reduce administrative burdens on both the Government and the public. The FAR no longer requires contracting officers to use balance of payments procedures to evaluate foreign offers when acquiring supplies for use outside the United States that are valued at more than \$100,000, but not more than \$186,000, or when awarding a construction contract to be performed outside the United States and valued at less than \$6,909,500. However, the Balance of Payments Program will be continued in the Department of Defense, and a Defense Federal Acquisition Regulation Supplement rule is being processed for this purpose.

Item III—European Union Trade Sanctions (FAR Case 2001–002)

This final rule revises FAR 25.1103(c)(2)(i) to specifically exclude solicitations issued and contracts awarded by DoD from the clause prescription for the use of FAR clauses 52.225–15, Sanctioned European Union Country End Products, and 52.225–16, Sanctioned European Union Country Services. This rule is a clarification of existing policy. DoD contracting officers must ensure that the clauses implementing European Union trade sanctions are not included in DoD solicitations and contracts.

Item IV—Technical Amendments

These amendments update sections and make editorial changes at FAR 12.301, 52.214–20, and 52.244–2.

Dated: April 23, 2002.

Al Matera,

Director, Acquisition Policy Division.

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