DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 25 and 52

[FAC 2005–61; FAR Case 2012–004; Item I; Docket 2012–0004, Sequence 1]

RIN 9000–AM18

Federal Acquisition Regulation; United States-Korea Free Trade Agreement

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are adopting as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the United States-Korea Free Trade Agreement. The Republic of Korea is already party to the World Trade Organization Government Procurement Agreement, but this trade agreement implements a lower procurement threshold.

DATES: *Effective Date:* September 13, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–61, FAR Case 2012–004.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** on March 7, 2012 (77 FR 13952), to implement the Free Trade Agreement with the Republic of Korea, which took effect on March 15, 2012. The comment period closed on May 7, 2012. Three respondents submitted comments on the interim rule.

The interim rule added the Republic of Korea to the definition of ''Free Trade Agreement country'' in multiple locations in the FAR. The Republic of Korea was already listed as a designated country because it is party to the WTO GPA. The excluded services for the Korea FTA are the same as for the WTO GPA. By implementation of this Korea FTA, eligible goods and services from Korea are now covered when valued at or above $100,000, rather than at or above the WTO GPA threshold of $202,000. The threshold for the Korea FTA for construction is the same as the threshold for the WTO GPA for construction.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Significant Changes

The Councils have adopted the interim rule as final without change.

B. Analysis of Public Comments

1. Impact on U.S. Businesses and Economy

Comment: One respondent expressed agreement that the United States has the responsibility to do business with Free Trade Agreement countries, but was concerned that lowering the trade agreements threshold from $202,000 to $100,000 for goods and services from the Republic of Korea will damage the small American business owners' chances to compete, because of lower minimum wage in Korea. The respondent was also concerned that lowering the threshold will increase the national deficit. This respondent also stated that the rule will benefit U.S. big business owners to the detriment of small American business owners.

Response: DoD, GSA, and NASA issued this final rule because it implements a statute (United States-Korea Free Trade Agreement Implementation Act, Pub. L. 112–41, enacted on October 21, 2011). The Councils do not have discretion to set trade agreement thresholds.

However, as discussed in the section on Regulatory Flexibility, the lowering of the threshold from $202,000 to $100,0000 only applies to the supplies and services covered by the Korea Free Trade Agreement. For DoD, it only covers the non-defense items listed at Defense Federal Acquisition Regulations System *(DFARS) 225.401–70.* Acquisitions that are set aside or provide other form of preference for small businesses are exempt from the Korea Free Trade Agreement. FAR 19.502–2 states that acquisitions that do not exceed $150,000 (except as described in paragraph (1) of the definition of ''simplified acquisition threshold'' at 2.101) are automatically reserved exclusively for small business concerns, unless the contracting officer determines that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns.

2. Implementation in Contracts for Services

Comment: One respondent questioned how agencies will implement the Korea Free Trade Agreement for services.

Response: This question is not unique to the Korea Free Trade Agreement. The FAR does not provide provisions or clauses for the specific implementation of any trade agreements. The FAR provisions and clauses address only end products, because the provisions and clauses are necessary to—

- Waive the Buy American Act, which only applies to supplies; and
- Implement the purchase restriction at 25.403(c) for acquisitions that exceed the World Trade Organization Government Procurement Agreement (WTO GPA) threshold of $202,000. Below that threshold, there is no purchase restriction on acquisition of services from nondesignated countries.

The requirements of the Free Trade Agreements relate primarily to acquisition procedures that are already specified in the FAR, *e.g.,* FAR 5.203, Publicizing and response time; FAR 5.207, Preparation and transmittal of synopses; and FAR 15.503, Notifications to unsuccessful offerors (see FAR 25.408 for other applicable procedures).

3. Procuring Entities of the Central Level of the U.S. Government

Comment: One respondent requested that the final rule should include the list of the entities of the U.S. central level of Government, which have certain obligations with respect to Government procurement of goods and services.

Response: The FAR has not included the list of Federal entities subject to any other free trade agreement or the WTO GPA. Therefore, the Councils do not consider inclusion of such a list in the FAR for the Korea Free Trade Agreement to be necessary or appropriate.

4. Past Performance

Comment: One respondent expressed appreciation of the specific reference to Article 17.5.2(b) of the Korea Free Trade Agreement in the **Federal Register** preamble to the interim rule. Article 17.5.2.(b) stipulates that an agency shall not impose a condition that, in order for an offeror to be allowed to submit an offer or be awarded a contract, the offeror has been previously awarded one or more contracts by an agency of the United States Government or that the offeror has prior work experience in the United States. The respondent suggested that Office of Management and Budget

guidance on ''best practices for collecting and using current and past performance information'' be updated by adding best practices related to Articles 17.5.2(b) of the Korea Free Trade Agreement.

Response: Changes to the Office of Management and Budget guidance are outside the scope of this rule. The Councils note, however, that FAR 15.305(a)(2)(iv) already requires that, in the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. 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 Korea is already a designated country under the WTO GPA. Although the rule opens up Government procurement to the goods and services of Korea at or above the threshold of $100,000, the Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside or provide other form of preference for small businesses are exempt from coverage of the agreement. FAR 19.502–2 states that acquisitions that do not exceed $150,000 (except as described in paragraph (1) of the definition of ''simplified acquisition threshold'' at 2.101) are automatically reserved exclusively for small business concerns, unless the contracting officer determines that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns.

V. Paperwork Reduction Act

The rule affects the certification and information collection requirements in the provisions at FAR 52.212–3 and 52.225–4, 52.225–6, and 52.225–11 currently approved under the Office of Management and Budget Control Numbers 9000–0136, 9000–0130, 9000–0025, and 9000–0141 respectively, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because it is just a question of which category offered goods from the Republic of Korea would be listed under.

List of Subjects in 48 CFR Parts 4, 25, and 52

Government procurement.

Dated: September 7, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Interim Rule Adopted as Final Without Changes

■ Accordingly, the interim rule amending 48 CFR parts 4, 25, and 52, which was published in the **Federal Register** at 77 FR 13952 on March 7, 2012, is adopted as a final rule without changes.

[FR Doc. 2012–22574 Filed 9–12–12; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 2005–61; FAR Case 2012–026; Item II; Docket 2012–0026, Sequence 1]

RIN 9000–AM35

Federal Acquisition Regulation; Delete Outdated FAR Reference to the DoD Industrial Preparedness Program

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to delete references to the obsolete ''DoD Industrial Preparedness Program''.

DATES: *Effective Date:* October 15, 2012

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lague, Procurement Analyst, at 202–694–8149, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–61, FAR Case 2012–026.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing a final rule to delete references to the obsolete ''DoD Industrial Preparedness Program'' at FAR 6.302–3(b)(iv).

In 1992, DoD rescinded the following regulations for the DoD's Industrial Preparedness Program: DoD Directive 4005.1, Industrial Preparedness Program; and DoD Instruction 4005.3, Industrial Preparedness Planning. References to the program have already been removed from the Defense Federal Acquisition Regulation Supplement (DFARS) (71 FR 39004, July 11, 2006).

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations'', 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it only deletes references to an obsolete program; which has neither a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure or form, nor has a significant cost or administrative impact on contractors or offerors.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,