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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005-86; FAR Case 2015-034; Item III; Docket No. 2015-0034; Sequence No. 1]

RIN 9000-AN15

**Federal Acquisition Regulation; New Designated Countries—
Montenegro and New Zealand**

AGENCIES: 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 add Montenegro and New Zealand as new designated countries under the World Trade Organization Government Procurement Agreement (WTO GPA) and update the list of parties to the Agreement on Trade in Civil Aircraft.

DATES: Effective: **[Insert date 30 days after publication in the FEDERAL REGISTER].**

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

Division at 202-501-4755. Please cite FAC 2005-86, FAR Case 2015-034.

SUPPLEMENTARY INFORMATION:

I. Background

On July 15, 2015, Montenegro became a party to the WTO GPA. New Zealand became a party to the WTO GPA on August 12, 2015. The Trade Agreements Act (19 U.S.C. 2501 et seq.) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this authority to the U.S. Trade Representative.

Effective July 15, 2015, because Montenegro became a party to the WTO GPA, and because the U.S. Trade Representative has determined that Montenegro will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, the U.S. Trade Representative published a notice in the Federal Register at 80 FR 39829 on July 10, 2015, waiving the Buy American Act and other discriminatory provisions for eligible products from Montenegro.

Effective August 12, 2015, because New Zealand became a party to the WTO GPA, and because the U.S. Trade

Representative has determined that New Zealand will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, the U.S. Trade Representative published a notice in the Federal Register at 80 FR 48386 on August 12, 2015, waiving the Buy American Act and other discriminatory provisions for eligible products from New Zealand.

In addition, the Office of the U.S. Trade Representative has also indicated that Montenegro is a party to the Agreement on Trade in Civil Aircraft. The U.S. Trade Representative has waived the Buy American Act for civil aircraft and related articles from countries that are parties to the Agreement on Trade in Civil Aircraft.

II. Discussion and Analysis

Therefore, this rule adds Montenegro and New Zealand to the list of World Trade Organization Government Procurement Agreement countries wherever it appears in the FAR, whether as a separate definition, part of the definition of "designated country" or "Recovery Act designated country," or as part of the list of countries exempt from the prohibition of acquisition of products produced by forced or indentured child labor (FAR 22.1503, 25.003, 52.222-19, 52.225-5, 52.225-11, and 52.225-23).

This rule also updates FAR 25.407 and 52.225-7 to reflect that Montenegro is already a party to the Agreement on Trade in Civil Aircraft.

Conforming changes were required to FAR 52.212-5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, and 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

III. Publication of this final rule for public comment is not required by statute

“Publication of proposed regulations”, 41 U.S.C. 1707, applies to the publication of the Federal Acquisition Regulation. 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 operating 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 has no significant cost or administrative impact on contractors or offerors. The rule solely updates the lists of designated

countries and countries that are parties to the Agreement on Trade in Civil Aircraft, in order to conform to the determinations by the U.S. Trade Representative.

IV. 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 not a significant regulatory action and, therefore, was not 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.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

The Paperwork Reduction Act does apply, because the rule affects the response of an offeror that is offering a product of Montenegro to the information collection requirements in the provisions at FAR 52.212-3(g) (5), 52.225-6, and 52.225-11. The offeror is no longer required to list a product from Montenegro or New Zealand under "other end products", because Montenegro is now a designated country. These information collection requirements are currently approved under OMB clearances 9000-0136, 9000-0025, and 9000-0141 respectively. The impact, however, is negligible.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: December 17, 2015.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

ACQUISITIONS

22.1503 [Amended]

2. Amend section 22.1503 by adding to paragraph (b) (4), in alphabetical order, "Montenegro," and "New Zealand,".

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

3. Amend section 25.003 by—

- a. In the definition "Designated country"—
 - i. Removing from paragraph (1) "Agreement" and adding "Agreement (WTO GPA)" in its place and adding, in alphabetical order, "Montenegro," and "New Zealand,"; and
 - ii. Removing from paragraph (2) "Agreement" and adding "Agreement (FTA)" in its place; and
- b. In the definition "World Trade Organization Government Procurement Agreement (WTO GPA) country",

adding, in alphabetical order, "Montenegro," and "New Zealand,".

25.407 [Amended]

4. Amend section 25.407 by adding, in alphabetical order, the word "Montenegro,".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212-5 by revising the date of the clause and paragraphs (b) (26) and (43) to read as follows:

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

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (**[INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**)

* * * * *

(b) * * *

____ (26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (**[INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**) (E.O. 13126).

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____ (43) 52.225-5, Trade Agreements (**[INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

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6. Amend section 52.213-4 by adding a period at the end of the section heading and revising the date of the clause and paragraph (b) (1) (ii) to read as follows:

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

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TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER])

* * * * *

(b) * * *

(1) * * *

(ii) 52.222-19, Child Labor—Cooperation with Authorities and Remedies ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold).

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7. Amend section 52.222-19 by revising the date of the clause and adding to paragraph (a) (4), in alphabetical order, "Montenegro," and "New Zealand," to read as follows:

52.222-19 Child Labor—Cooperation with Authorities and Remedies.

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CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER])

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8. Amend section 52.225-5 by-
 - a. Revising the date of the clause; and
 - b. In paragraph (a), under the definition of "Designated country"-
 - i. In paragraph (1)-
 - A. Removing "Agreement" and adding "Agreement (WTO GPA)" in its place;
 - B. Adding, in alphabetical order, "Montenegro," and "New Zealand,"; and
 - C. Removing "Taipei))", " and adding "Taipei))", " in its place; and
 - ii. Removing from paragraph (2) "Agreement" and adding "Agreement (FTA)" in its place.

The revision reads as follows:

52.225-5 Trade Agreements.

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TRADE AGREEMENTS ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER])

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9. Amend section 52.225-7 by revising the date of the provision and adding to paragraph (b), in alphabetical order, "Montenegro," to read as follows:

52.225-7 Waiver of Buy American Statute for Civil Aircraft and Related Articles.

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WAIVER OF BUY AMERICAN STATUTE FOR CIVIL AIRCRAFT AND RELATED ARTICLES
([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER
PUBLICATION IN THE FEDERAL REGISTER])

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10. Amend section 52.225-11 by-

a. Revising the date of the clause; and

b. In paragraph (a), under the definition of

"Designated country"-

i. In paragraph (1), removing "Agreement" and adding "Agreement (WTO GPA)" in its place and adding, in alphabetical order "Montenegro," and "New Zealand,"; and

ii. Removing from paragraph (2) "Agreement" and adding "Agreement (FTA)" in its place.

The revision reads as follows:

52.225-11 Buy American-Construction Materials Under Trade Agreements.

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BUY AMERICAN-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER
PUBLICATION IN THE FEDERAL REGISTER])

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11. Amend section 52.225-23 by-

a. Revising the date of the clause; and

b. In paragraph (a)-

i. In the definition of "Designated country", adding to paragraph (1), in alphabetical order, "Montenegro," and "New Zealand,"; and

ii. In the definition of "Recovery Act designated country", adding in paragraph (1), in alphabetical order, "Montenegro," and "New Zealand,".

The revision reads as follows:

**52.225-23 Required Use of American Iron, Steel, and
Manufactured Goods—Buy American Statute—Construction
Materials Under Trade Agreements.**

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REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—
BUY AMERICAN STATUTE—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
(**[INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER
PUBLICATION IN THE FEDERAL REGISTER]**)

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