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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 2016-001; Item No. IV; Docket No. 2016-0001, Sequence No. 1]**

**RIN 9000-AN16**

**Federal Acquisition Regulation; Trade Agreements Thresholds**

**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 incorporate revised thresholds for application of the World Trade Organization (WTO) Government Procurement Agreement (GPA) and the Free Trade Agreements (FTAs), as determined by the United States Trade Representative.

**DATES:** Effective: January 1, 2016.

**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 2016-001.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Approximately every two years, the trade agreements thresholds are adjusted according to a pre-determined formula under the agreements. These thresholds become effective on January 1, 2016. The United States Trade Representative published new procurement thresholds in the Federal Register at 80 FR 77694, on December 15, 2015. The United States Trade Representative has specified the following new thresholds:

<b>Trade Agreement</b>	<b>Supply Contract (equal to or exceeding)</b>	<b>Service Contract (equal to or exceeding)</b>	<b>Construction Contract (equal to or exceeding)</b>
<b>WTO GPA</b>	\$191,000	\$191,000	\$7,358,000
<b>FTAs</b>			
<b>Australia FTA</b>	77,533	77,533	7,358,000
<b>Bahrain FTA</b>	191,000	191,000	10,079,365
<b>CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)</b>	77,533	77,533	7,358,000
<b>Chile FTA</b>	77,533	77,533	7,358,000
<b>Colombia FTA</b>	77,533	77,533	7,358,000

<b>Korea FTA</b>	100,000	100,000	7,358,000
<b>Morocco FTA</b>	191,000	191,000	7,358,000
<b>NAFTA</b>			
<b>—Canada</b>	25,000	77,533	10,079,365
<b>—Mexico</b>	77,533	77,533	10,079,365
<b>Oman FTA</b>	191,000	191,000	10,079,365
<b>Panama FTA</b>	191,000	191,000	7,358,000
<b>Peru FTA</b>	191,000	191,000	7,358,000
<b>Singapore FTA</b>	77,533	77,533	7,358,000
<b>Israeli Trade Act</b>	50,000	—	—

## **II. Discussion and Analysis**

This final rule implements the new thresholds in FAR subpart 25.4, Trade Agreements, and other sections in the FAR that include trade agreements thresholds (i.e., FAR sections 22.1503, 25.202, 25.603, 25.1101, and 25.1102).

In addition, changes are required to FAR sections 52.204-8, Annual Representations and Certifications, and 52.222-19, Child Labor-Cooperation with Authorities and Remedies, with conforming changes to the clause dates in FAR sections 52.212-5, Contract Terms and Conditions Required to Implement Statutes 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 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 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 only adjusts the thresholds according to pre-determined formulae to adjust for changes in economic conditions, thus maintaining the status quo, without significant effect beyond the internal operating procedures of the Government.

#### **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, and 41 U.S.C. 1707 does not require publication for public comment.

#### **VI. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C chapter 35) does apply, because the final rule affects the prescriptions for use of the certification and information collection requirements in the provisions at FAR sections 52.225-4, OMB Control No. 9000-0130, titled: Buy American Act-Free Trade Agreement-Israeli Trade Certificate; 52.225-6, OMB Control No. 9000-0025, titled: Trade Agreements Certificate; and the clauses at FAR 52.225-9, 52.225-11, 52.225-21, and 52.225-23, OMB Control No. 9000-0141, titled: Buy American-Construction. However, there is no impact on the estimated burden hours, because the threshold changes are in line with inflation and maintain the status quo.

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

Government procurement.

Dated: December 17, 2015.

William Clark,  
Director,  
Office of Governmentwide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Governmentwide 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 removing from paragraph (b) (3) "\$79,507" and adding "\$77,533" in its place and removing from paragraph (b) (4) "\$204,000" and adding "\$191,000" in its place.

**PART 25—FOREIGN ACQUISITION**

**25.202 [Amended]**

3. Amend section 25.202 by removing from paragraph (c) "\$7,864,000" and adding "\$7,358,000" in its place.

4. Amend section 25.402 by removing from paragraph (a) (1) "the USTR" and adding "the U.S. Trade Representative" in its place and revising the table in paragraph (b) to read as follows:

**25.402 General.**

\* \* \* \* \*

(b) \* \* \*

<b>Trade Agreement</b>	<b>Supply Contract (equal to or exceeding)</b>	<b>Service Contract (equal to or exceeding)</b>	<b>Construction Contract (equal to or exceeding)</b>
WTO GPA	\$191,000	\$191,000	\$7,358,000
FTAs			
Australia FTA	77,533	77,533	7,358,000
Bahrain FTA	191,000	191,000	10,079,365
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,533	77,533	7,358,000
Chile FTA	77,533	77,533	7,358,000
Colombia FTA	77,533	77,533	7,358,000
Korea FTA	100,000	100,000	7,358,000
Morocco FTA	191,000	191,000	7,358,000
NAFTA			
–Canada	25,000	77,533	10,079,365
–Mexico	77,533	77,533	10,079,365
Oman FTA	191,000	191,000	10,079,365
Panama FTA	191,000	191,000	7,358,000
Peru FTA	191,000	191,000	7,358,000
Singapore FTA	77,533	77,533	7,358,000
Israeli Trade Act	50,000	–	–

**25.603 [Amended]**

5. Amend section 25.603 by removing from paragraph (c) (1) "\$7,864,000" and adding "\$7,358,000" in its place.

**25.1101 [Amended]**

6. Amend section 25.1101 by—

a. Removing from paragraph (b) (1) (i) (A) "\$204,000" and adding "\$191,000" in its place;

b. Removing from paragraphs (b) (1) (iii), (b) (1) (iv), (b) (2) (iii), and (b) (2) (iv) "\$79,507" and adding "\$77,533" in their places;

c. Removing from paragraph (c) (1) "\$204,000" and adding "\$191,000" in its place; and

d. Removing from paragraph (d) "statute" and "\$204,000" and adding "Statute" and "\$191,000" in their places, respectively.

**25.1102 [Amended]**

7. Amend section 25.1102 by—

a. Removing from the introductory texts of paragraphs (a) and (c) "\$7,864,000" and adding "\$7,358,000" in their place; and

b. Removing from paragraphs (c) (3) and (d) (3) "\$7,864,000" and "\$10,335,931" and adding "\$7,358,000" and "\$10,079,365" in their places, respectively.

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

8. Revise section 52.204-8 by—

- a. Revising the date of the provision;
- b. Removing from paragraphs (c) (1) (xvii) (C) and (D) "\$79,507" and adding "\$77,533" in their places; and
- c. Removing from the introductory text of paragraph (c) (2) "certifications" and adding "representations or certifications" in its place.

The revision reads as follows:

**52.204-8 Annual Representations and Certifications.**

\* \* \* \* \*

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (JAN 2016)

\* \* \* \* \*

9. Amend section 52.212-5 by revising the date of the clause and paragraph (b) (26) and removing from paragraph (e) (2) "contractor" and adding "Contractor" in its place to read 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 (JAN 2016)

\* \* \* \* \*

(b) \* \* \*

\_\_\_\_(26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (JAN 2016) (E.O. 13126).

\* \* \* \* \*

10. Amend section 52.213-4 by 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).**

\* \* \* \* \*

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITION (OTHER THAN COMMERCIAL  
ITEMS) (JAN 2016)

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (JAN 2016) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

\* \* \* \* \*

11. Amend section 52.222-19 by—

a. Revising the date of the clause;

b. Removing from paragraph (a) (3) "\$79,507" and adding "\$77,533" in its place; and

c. Removing from paragraph (a) (4) "\$204,000" and adding "\$191,000" in its place.

The revision reads as follows:

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

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CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (JAN 2016)

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**[Billing Code: 6820-EP]**

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