



This document is scheduled to be published in the Federal Register on 08/01/2013 and available online at <http://federalregister.gov/a/2013-18463>, and on [FDsys.gov](http://FDsys.gov)

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 25 and 52**

[FAC 2005-69; FAR Case 2013-009; Item V; Docket 2013-0009, Sequence 1]

RIN 9000-AM62

Federal Acquisition Regulation; Least Developed Countries that are Designated Countries.

**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 implement a revision by the United States Trade Representative (USTR) to the list of least developed countries that are designated countries under the Trade Agreements Act of 1979.

**DATE:** 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 at 202-501-4755. Please cite FAC 2005-69, FAR Case 2013-009.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

19 U.S.C. 2511(b) (4) allows the President to designate least developed countries as eligible countries under the Trade Agreements Act of 1979, allowing non-discriminatory treatment of the products of such countries in acquisitions subject to the World Trade Organization Government Procurement Agreement. This statutory authority has been delegated to the USTR. The USTR selects the countries for such designation from the United Nations (UN) Least Developed Countries List. USTR consults with other government agencies on trade policy matters through the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). These changes are necessary to reflect the current UN Least Developed Countries List. Based on TPSC's approval on February 13, 2013, to incorporate the changes to the UN Least Developed Countries List, the USTR has revised the list of least developed countries that are designated as eligible countries as follows:

- Changed the name of East Timor to Timor-Leste, reflecting the change on the UN list.
- Removed the Maldives, which is no longer a least developed country.
- Added South Sudan, which seceded from Sudan to form an independent state on July 9, 2011, and was formally

recognized as a least developed country by the UN in December 2012. Although the United States continues to impose sanctions against Sudan, South Sudan is not subject to sanctions.

This final rule revises the definitions of "designated country" and "least developed country" at various locations throughout the FAR (FAR 25.003, Definitions; FAR 52.225-5, Trade Agreements; FAR 52.225-11, Buy American Act—Construction Materials under Trade Agreements; and FAR 52.225-23, Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements) and makes a conforming change to FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

**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 that 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 revises the list of least developed countries that the USTR has designated as eligible for non-discriminatory treatment under the Trade Agreements Act. The addition of South Sudan and removal of the Maldives will have no significant effect beyond the internal operating procedures of the Government or a significant cost or administrative impact on contractors or offerors, because the trade of all 49 least developed countries combined accounts for less than 1 percent of the global trade according to United Nations data. Individual least developed countries generate an average of less than .02 percent of the global trade. Since we are adding one least developed country and removing one, the net effect is negligible.

### **III. Executive Orders 12866 and 13563**

Executive Orders 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.

#### **IV. 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.

#### **V. Paperwork Reduction Act**

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 25 and 52**

Government procurement.

Dated: July 26, 2013.

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

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

1. The authority citation for 48 CFR parts 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 25—FOREIGN ACQUISITION**

**25.003 [Amended]**

2. Amend section 25.003 by—

a. Removing from the definition "Designated country" in paragraph (3) "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste,"; and

b. Removing from the definition "Least developed country" the words "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste,".

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

3. Amend section 52.212-5 by revising the date of the clause and paragraph (b) (41) 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 ( [INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] )

\* \* \* \* \*

(b) \* \* \*

\_\_\_\_\_ (41) 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).

\* \* \* \* \*

4. Amend section 52.225-5 by—

a. Revising the date of the clause; and

b. Removing from paragraph (a) in the definition "Designated country" in paragraph (3) "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste,".

The revision reads as follows:

**52.225-5 Trade Agreements.**

\* \* \* \* \*

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

\* \* \* \* \*

5. Amend section 52.225-11 by—

a. Revising the date of the clause; and

b. Removing from paragraph (a) in the definition "Designated country" in paragraph (3) "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste,".

The revision reads as follows:

**52.225-11 Buy American Act—Construction Materials under Trade Agreements.**

\* \* \* \* \*

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

\* \* \* \* \*

6. Amend section 52.225-23 by—

a. Revising the date of the clause;

b. Removing from paragraph (a) in the definition "Designated country" in paragraph (3) "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste, "; and

c. Removing from paragraph (a) in the definition "Recovery Act designated country" in paragraph (3) "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste, ".

The revision reads as follows:

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

\* \* \* \* \*

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

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[BILLING CODE 6820-EP]

[FR Doc. 2013-18463 Filed 07/31/2013 at 8:45 am; Publication

Date: 08/01/2013]