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LEGAL STATUS

Federal Acquisition Regulation: Trade Agreements Thresholds

A Rule by the [Defense Department](#), the [General Services Administration](#), and the [National Aeronautics and Space Administration](#) on [02/23/2024](#)

DOCUMENT DETAILS

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- [General Services Administration](https://www.federalregister.gov/agencies/general-services-administration) (<https://www.federalregister.gov/agencies/general-services-administration>)
- [National Aeronautics and Space Administration](https://www.federalregister.gov/agencies/national-aeronautics-and-space-administration) (<https://www.federalregister.gov/agencies/national-aeronautics-and-space-administration>)

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Effective date: February 23, 2024.

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- [48 CFR 22](#)
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FAR Case 2023-012

Item II

Docket No. FAR-2023-0012

Sequence No. 1

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2024-02798

DOCUMENT DETAILS**PUBLISHED DOCUMENT****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 incorporate revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES:

Effective date: February 23, 2024.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 or by email at michaelo.jackson@gsa.gov (<mailto:michaelo.jackson@gsa.gov>) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov (<mailto:GSARegSec@gsa.gov>). Please cite FAC 2024-03, FAR case 2023-012.

SUPPLEMENTARY INFORMATION:**I. Background**

Approximately every two years, the trade agreements thresholds for the World Trade Organization Government Procurement Agreement (WTO GPA) and the free trade agreements (FTAs) are adjusted according to predetermined formulae under the agreements. These thresholds are effective as of January 1, 2024. On December 8, 2023 (88 FR 85718 (/citation/88-FR-85718)), the United States Trade Representative (USTR) published new procurement thresholds.

The United States Trade Representative has specified the following new thresholds:

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	\$174,000	\$174,000	\$6,708,000
FTAs:			
Australia FTA	102,280	102,280	6,708,000
Bahrain FTA	174,000	174,000	13,296,489
Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	102,280	102,280	6,708,000
Chile FTA	102,280	102,280	6,708,000
Colombia FTA	102,280	102,280	6,708,000
Korea FTA	100,000	100,000	6,708,000
Morocco FTA	174,000	174,000	6,708,000
United States-Mexico-Canada Agreement (USMCA):			
-Mexico	102,280	102,280	13,296,489
Oman FTA	174,000	174,000	13,296,489
Panama FTA	174,000	174,000	6,708,000
Peru FTA	174,000	174,000	6,708,000
Singapore FTA	102,280	102,280	6,708,000
Israeli Trade Act	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 22.1503, 25.202, 25.402, 25.603, 25.1101, and 25.1102).

A group of FTAs have been at the \$92,319 threshold and are increasing to \$102,280. This group includes the Australia, Chile, Colombia, and Singapore FTAs, CAFTA–DR, and Mexico in the USMCA. The 2024 threshold change places these FTAs above the \$100,000 Korea FTA threshold, instead of beneath it. These new thresholds do not work with the pre-existing framework in the FAR. The Korea FTA at \$100,000 and above previously fit alongside the Australia FTA/CAFTA–DR group at \$92,319 and above, but this will no longer be so because there can no longer be any values that are less than the Korea FTA threshold, but greater than the Australia FTA/CAFTA–DR group threshold. Three primary changes were made to fix the framework.

1. At FAR 25.1101, the prescription for Alternate II of FAR 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act, is changed so that it no longer applies to the Australia FTA/CAFTA–DR group, but instead only to the Israeli Trade Act. There are no changes to the Alternate II language.
2. At FAR 25.1101, the prescription for Alternate III of FAR 52.225–3 is changed so that it only applies to the Korea FTA and Israeli Trade Act. Application of the Australia FTA/CAFTA–DR group moves into the base clause of FAR 52.225–3.
3. A change to the Alternate III language was needed due to the change in the prescription. DoD, GSA, and NASA deleted the definition of “Bahraini, Moroccan, Omani, Panamanian, or Peruvian end product,” and in its place added a definition of “Korean end product.” DoD, GSA, and NASA also added a corresponding change in the prescription and Alternate III of FAR 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate.

In addition, changes are required to the provisions at FAR 52.204–8, Annual Representations and Certifications, and 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, and to the clause at FAR 52.222–19, Child Labor—Cooperation with Authorities and Remedies, with conforming changes to the clause dates in FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services, and FAR 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

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

The statute that applies to the publication of the FAR is 41 U.S.C. 1707 (<https://www.govinfo.gov/link/uscode/41/1707>). Subsection (a)(1) of 41 U.S.C. 1707 (<https://www.govinfo.gov/link/uscode/41/1707>) 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 predetermined formulae to adjust for changes

in economic conditions, thus maintaining the status quo, without significant effect beyond the internal operating procedures of the Government and without a significant cost or administrative impact on contractors or offerors.

IV. Expected Impact of the Rule

This final rule will adjust the thresholds for application of the WTO GPA and FTAs, as determined by the USTR. For acquisitions covered by the WTO GPA or FTAs, the USTR has waived the Buy American statute and other discriminatory provisions for eligible products. As a result, eligible products and services will receive equal consideration with domestic offers if the estimated value of the contract meets or exceeds the new thresholds set by the USTR. This rule is not expected to significantly impact domestic offerors or offerors covered by the WTO GPA or a FTA because the threshold adjustments made under this rule simply accommodate changes in economic conditions, while maintaining the status quo.

V. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule amends the FAR to make minor revisions in the thresholds for application of the WTO GPA and the FTAs. The revisions do not add any new burdens or, except for the thresholds changes themselves, impact applicability of clauses and provisions at or below the simplified acquisition threshold, to acquisitions of commercial products (including commercially available off-the-shelf items), or to acquisitions of commercial services.

VI. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094 (/executive-order/14094)) and 13563 direct agencies to assess the 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 (/executive-order/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.

VII. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2) (<https://www.govinfo.gov/link/uscode/5/804>).

VIII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (<https://www.govinfo.gov/link/uscode/41/1707>) (see section III of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612 (<https://www.govinfo.gov/link/uscode/5/601>)) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

IX. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at FAR 52.225–2, 52.225–4, 52.225–6, and 52.225–10, and the clauses at FAR 52.225–9, 52.225–11, 52.225–21, and 52.225–23, currently approved under OMB Control Number 9000–0024, entitled “Buy American Act, Trade Agreements, and Duty-Free Entry,” in accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3521 (<https://www.govinfo.gov/link/uscode/44/3501>)). The impact, however, is negligible, because the threshold changes are in line with inflation and ☐ maintain the status quo. As a result, there is no change to the estimated burden.

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List of Subjects in 48 CFR Parts 22 (<https://www.ecfr.gov/current/title-48/part-22>), 25 (<https://www.ecfr.gov/current/title-48/part-25>), and 52 (<https://www.ecfr.gov/current/title-48/part-52>)

- Government procurement

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 (<https://www.ecfr.gov/current/title-48/part-22>), 25 (<https://www.ecfr.gov/current/title-48/part-25>), and 52 (<https://www.ecfr.gov/current/title-48/part-52>) as set forth below:

1. The authority citation for 48 CFR parts 22 (<https://www.ecfr.gov/current/title-48/part-22>), 25 (<https://www.ecfr.gov/current/title-48/part-25>), and 52 (<https://www.ecfr.gov/current/title-48/part-52>) continues to read as follows:

Authority: 40 U.S.C. 121(c) (<https://www.govinfo.gov/link/uscode/40/121>); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016 (<https://www.govinfo.gov/link/uscode/10/3016>)); and 51 U.S.C. 20113 (<https://www.govinfo.gov/link/uscode/51/20113>).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

2. Amend section 22.1503 by—

- (a) Removing from paragraph (b)(2) “\$92,319” and adding “\$102,280” in its place; and
- (b) Removing from paragraph (b)(3) “\$183,000” and adding “\$174,000” in its place.

PART 25—FOREIGN ACQUISITION

25.202 [Amended]

3. Amend section 25.202 by removing from paragraph (c) “\$7,032,000” and adding “\$6,708,000” in its place.

4. Amend section 25.402 in paragraph (b) by revising table 1 to read as follows:

25.402	General.				
★*	★*	★*	★*	★*	
(b) * * *					

Table 1 to Paragraph (b)

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	\$174,000	\$174,000	\$6,708,000
FTAs:			
Australia FTA	102,280	102,280	6,708,000
Bahrain FTA	174,000	174,000	13,296,489
CAFTA—DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	102,280	102,280	6,708,000
Chile FTA	102,280	102,280	6,708,000
Colombia FTA	102,280	102,280	6,708,000
Korea FTA	100,000	100,000	6,708,000
Morocco FTA	174,000	174,000	6,708,000
USMCA:			
—Mexico	102,280	102,280	13,296,489
Oman FTA	174,000	174,000	13,296,489
Panama FTA	174,000	174,000	6,708,000
Peru FTA	174,000	174,000	6,708,000
Singapore FTA	102,280	102,280	6,708,000
Israeli Trade Act	50,000		

25.603 [Amended]

5. Amend section 25.603 by removing from paragraph (c)(1) “\$7,032,000” and adding “\$6,708,000” in its place.

25.1101 [Amended]

6. Amend section 25.1101 by—

- a.** Removing from paragraph (b)(1)(i)(A) “\$183,000” and adding “\$174,000” in its place;
- b.** Removing from paragraph (b)(1)(ii) “\$92,319” and adding “\$100,000” in its place;
- c.** Removing from paragraph (b)(1)(iii) “\$92,319” and “\$100,000” and adding “\$100,000” and “\$102,280” in their places, respectively;
- d.** Removing from paragraph (b)(2)(ii) “\$92,319” and adding “\$100,000” in its place;
- e.** Removing from paragraph (b)(2)(iii) “\$92,319” and “\$100,000” and adding “\$100,000” and “\$102,280” in their places, respectively;
- f.** Removing from paragraph (c)(1) “\$183,000” and adding “\$174,000” in its place; and
- g.** Removing from paragraph (d) “\$183,000” and adding “\$174,000” in its place.

25.1102 [Amended]

7. Amend section 25.1102 by—

- a.** Removing from the introductory text of paragraphs (a) and (c) “\$7,032,000” and adding “\$6,708,000” in their places; and
- b.** Removing from paragraphs (c)(3) and (d)(3) “\$7,032,000” and “\$12,001,460” and adding “\$6,708,000” and “\$13,296,489” in their places, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 52.204–8 by—

- a.** Revising the date of the provision;
- b.** Removing from paragraph (c)(1)(xxi)(B) “\$92,319” and adding “\$100,000” in its place; and
- c.** Removing from paragraph (c)(1)(xxi)(C) “\$92,319” and “\$100,000” and adding “\$100,000” and “\$102,280” in their places, respectively.

The revision reads as follows:

52.204–8 Annual Representations and Certifications.

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Annual Representations and Certifications (Feb 2024)

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9. Amend section 52.212–3 by revising the date of the provision and paragraph (g)(3) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

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Offeror Representations and Certifications—Commercial Products and Commercial Services (Feb 2024)

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(g) * * *

(3) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate III.* If Alternate III to the clause at 52.225–3 is included in this solicitation, substitute the following paragraphs (g)(1)(i)(B) and (g)(1)(ii) □ for paragraphs (g)(1)(i)(B) and (g)(1)(ii) of the basic provision:

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(g)(1)(i)(B) The terms “Korean end product”, “commercially available off-the-shelf (COTS) item,” “critical component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.”

(g)(1)(ii) The Offeror certifies that the following supplies are Korean end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Korean End Products or Israeli End Products:

Line Item No.	Country of origin

[List as necessary]

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10. Amend section 52.212–5 by—

- a.** Revising the date of the clause;
- b.** Removing from paragraph (b)(32) “(NOV 2023)” and adding “(FEB 2024)” in its place; and
- c.** Removing from paragraph (b)(53)(iv) “(NOV 2023)” and adding “(FEB 2025)” in its place.

The revision reads as follows:

52.212–5

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—
Commercial Products and Commercial Services.**

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**Contract Terms and Conditions Required To Implement Statutes or Executive
Orders—Commercial Products and Commercial Services (FEB 2024)**

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11.Amend section 52.213–4 by—

- a. Revising the date of the clause; and
- b. Removing from paragraph (b)(1)(iii) “(NOV 2023)” and adding “(FEB 2024)” in its place.

The revision reads as follows:

**52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and
Commercial Services).**

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**Terms and Conditions—Simplified Acquisitions (Other Than Commercial
Products and Commercial Services) (FEB 2024)**

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12.Amend section 52.222–19 by—

- a. Revising the date of the clause; and
- b. Removing from paragraph (a)(2) “\$92,319” and adding “\$102,280” in its place; and
- c. Removing from paragraph (a)(3) “\$183,000” and adding “\$174,000” 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 (FEB 2024)

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13.Amend section 52.225–3 by revising Alternate III to read as follows:

52.225–3 Buy American—Free Trade Agreements—Israeli Trade Act.

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Alternate III (FEB 2024). As prescribed in 25.1101(b)(1)(iii), delete the definition of “Bahraini, Moroccan, Omani, Panamanian, or Peruvian end product” and add in its place the following definition of “Korean end product” in paragraph (a) of the basic clause; and substitute the following paragraph (c) for paragraph (c) of the basic clause.

Korean end product means an article that—

(1) Is wholly the growth, product, or manufacture of Korea (Republic of); or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) *Delivery of end products.* 41 U.S.C. chapter 83 provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907 (<https://www.govinfo.gov/link/uscode/41/1907>), the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding

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COTS fasteners. In addition, the Contracting Officer has determined that the Korea (Republic of) FTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Korean end product or an Israeli end product, then the Contractor shall supply a Korean end product, an Israeli end product, or at the Contractor's option, a domestic end product.

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14. Amend section 52.225–4 by revising Alternate III to read as follows:

52.225–4 **Buy American—Free Trade Agreements—Israeli Trade Act Certificate.**

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Alternate III (FEB 2024). As prescribed in 25.1101(b)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The Offeror certifies that the following supplies are Korean end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Korean End Products or Israeli End Products:

Line Item No.	Country of origin

[List as necessary]

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