

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Sections 803 and 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261).

**DATES:** *Effective Date:* April 25, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after April 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501-0692. Please cite FAC 97-17, FAR case 1998-300.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Councils initiated this case to implement Sections 803 and 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261) as follows:

(a) *Section 803 of Public Law 105-261.* (1) Paragraphs (a)(2)(A) through (a)(2)(C) of Section 803 of Pub. L. 105-261 require that the FAR provide specific guidance concerning—

(i) The appropriate application and precedence of various price analysis tools;

(ii) The circumstances under which contracting officers should require offerors of exempt commercial items to provide information other than cost or pricing data; and

(iii) The role and responsibility of support organizations in determining price reasonableness.

(2) Paragraph (a)(2)(D) of Section 803 is not implemented under this case.

(b) *Section 808 of Public Law 105-261.* Section 808 of Public Law 105-261 requires amending the FAR to—

(1) Clarify procedures associated with obtaining information other than cost or pricing data;

(2) Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award; and

(3) Establish exceptions, as appropriate.

The Councils published an interim rule in the **Federal Register** on September 24, 1999 (64 FR 51828). Five respondents submitted comments in response to the interim rule. The Councils considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under

Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with 5 U.S.C. 604. Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FRFA is summarized as follows:

The primary objective of this rule is to provide guidance on determining price reasonableness and commerciality, and to specify that offerors failing to comply with a requirement to provide certain information other than cost or pricing data are ineligible for award. There were no issues raised by the public in response to the Initial Regulatory Flexibility Analysis. The rule will apply to all offerors, large or small, that respond to solicitations for commercial items for which information other than cost or pricing data is required. Few, if any, offerors are expected to fail to comply with the requirements to provide information other than cost or pricing data. The rule does not impose any new reporting or recordkeeping requirements. There are no significant alternatives to the rule that would accomplish the stated objectives yet further reduce impact on small entities. The rule includes only FAR text revisions required to implement the statute cited herein.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 12, 13, and 15**

Government procurement.

Dated: April 13, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Interim Rule Adopted as Final With Change**

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 12, 13, and 15, which was published in the **Federal Register** on September 24, 1999 (64 FR 51828), as a final rule with the following change:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR parts 12, 13, and 15 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**15.403-3 [Amended]**

2. Amend section 15.403-3 at the end of paragraph (c)(1) by removing “(see 15.403-3(a)(1))” and adding “(see 15.404-1)” in its place.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 25 and 52**

[FAC 97-17; FAR Case 2000-003; Item III]

**RIN 9000-AI73**

**Federal Acquisition Regulation; Caribbean Basin Trade Initiative**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the determination of the United States Trade Representative (USTR) to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic and Honduras.

**DATES:** *Effective Date:* April 25, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after April 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-17, FAR case 2000-003.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The USTR published a notice in the **Federal Register** at 65 FR 9038, February 23, 2000, renewing the treatment of Caribbean Basin country

end products as eligible products under the Trade Agreements Act, with the exception of the end products from the Dominican Republic and Honduras. This rule implements that determination. The prior determination expired September 30, 1999, except that the determination regarding the end products of Panama extended until September 30, 2000.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-17, FAR case 2000-003), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

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

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c):

### PART 25—FOREIGN ACQUISITION

2. Revise the definition “Caribbean Basin country” in section 25.003 to read as follows:

#### 25.003 Definitions.

\* \* \* \* \*

*Caribbean Basin country* means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, El Salvador, Grenada, Guatemala, Guyana, Haiti, Jamaica,

Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

\* \* \* \* \*

3. In section 25.400, revise paragraph (a)(2) to read as follows:

#### 25.400 Scope of subpart.

(a) \* \* \*

(2) The Caribbean Basin Trade Initiative (the determination of the U.S. Trade Representative that end products granted duty-free entry from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq.*), with the exception of the Dominican Republic and Honduras, must be treated as eligible products under the Trade Agreements Act);

\* \* \* \* \*

4. Revise section 25.404 to read as follows:

#### 25.404 Caribbean Basin Trade Initiative.

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions subject to the Trade Agreements Act, Caribbean Basin country end products must be treated as eligible products. This determination is effective until September 30, 2000. The U.S. Trade Representative may extend these dates through a document in the Federal Register.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 52.225-5 [Amended]

5. Amend section 52.225-5 by revising the date of the clause to read “(APR 2000)”; and in paragraph (a), in the definition “Caribbean Basin country”, by removing “Dominican Republic,” and “Honduras,”.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 26 and 52

[FAC 97-17; FAR Case 1999-301 (99-301); Item IV]

RIN 9000-AI52

### Federal Acquisition Regulation; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to delete DoD-unique language pertaining to incentive payments made to prime contractors for the utilization of Indian organizations and Indian-owned economic enterprises.

**DATES:** *Effective Date:* June 26, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after June 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-17, FAR case 1999-301.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on October 27, 1999 (64 FR 57964). Six sources submitted comments in response to the proposed rule. The Councils considered all comments in the development of the final rule.

Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) established the Indian Incentive Program. Annual DoD appropriations acts have restricted DoD payments under the Program to those contractors that submitted subcontracting plans pursuant to 15 U.S.C. 637(d) and those contractors participating in the test program for comprehensive small business