

considered assistance furnished under the Program.

**I-106 [Amended]**

12. Appendix I to Chapter 2 is amended in Section I-106 as follows:

a. In paragraph (a) in the first sentence by removing "SDB" and adding in its place "applicable";

b. In paragraph (b)(3) by removing "SDB" and adding in its place "small and disadvantaged business utilization";

c. In paragraph (b)(8) in the first sentence by adding, after "SDB", the phrase "and WOSB";

d. In paragraph (c)(1) by adding, after "SDBs", the phrase "and WOSBs";

e. In paragraph (c)(2)(iii) by removing "(1) or (2)"; and

f. In paragraph (e) in the first sentence by removing "SDB" and adding in its place "applicable".

13. Appendix I to Chapter 2 is amended in Section I-107 by revising paragraph (b)(2) and the last sentence of paragraph (f)(3) to read as follows:

**I-107 Mentor-protege agreements.**

\* \* \* \* \*

(b) \* \* \*

(2) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that, at the time the agreement is submitted for approval, the protege firm, if an SDB or WOSB concern, does not exceed the size standard for the appropriate NAICS code;

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \* Provision of progress payments by a mentor firm to a protege firm at a rate other than the customary rate for the firm must be implemented in accordance with FAR 32.504(c).

\* \* \* \* \*

14. Appendix I to Chapter 2 is amended in Section I-108 by revising paragraph (c) to read as follows:

**I-108 Reimbursement procedures.**

\* \* \* \* \*

(c) Assistance provided in the form of progress payments to a protege firm in excess of the customary progress payment rate for the firm will be reimbursed only if implemented in accordance with FAR 32.504(c).

\* \* \* \* \*

15. Appendix I to Chapter 2 is amended in Section I-109 as follows:

a. By revising paragraph (a);

b. In paragraph (b) in the first sentence by removing "SDB" and adding in its place "applicable";

c. By revising paragraph (e) introductory text and paragraph (f);

d. In paragraph (g)(1) by removing "SDB";

e. In paragraph (h) introductory text by revising the first sentence;

f. In paragraph (h)(1) by removing "SDB" and adding in its place "small business"; and

g. In paragraph (m) by removing "SDB" and adding in its place "applicable". The revised text reads as follows:

**I-109 Credit for unreimbursed developmental assistance costs.**

(a) Developmental assistance costs incurred by a mentor firm for providing assistance to a protege firm pursuant to an approved mentor-protege agreement, that have not been reimbursed through a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, or through a separately priced contract line item added to a DoD contract, may be credited as if it were a subcontract award to that protege for determining the performance of the mentor firm in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219-9, Small Business Subcontracting Plan. Unreimbursed developmental assistance costs incurred for a protege firm that is a qualified organization employing the severely disabled may be credited toward the mentor firm's small disadvantaged business subcontracting goal, even if the protege firm is not a small disadvantaged business concern.

\* \* \* \* \*

(e) A mentor firm may receive credit toward the attainment of an SDB subcontracting goal for each subcontract awarded for a product or a service by the mentor firm to an entity that qualifies as an SDB protege firm pursuant to I-104(a)(1)(i) through (iv). With respect to former SDB protege firm(s), a mentor may take credit for awards to such concern(s) that, except for its size would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

\* \* \* \* \*

(f) Amounts credited toward applicable subcontracting goal(s) for unreimbursed costs under the Program must be separately identified from the amounts credited toward the goal resulting from the award of actual subcontracts to protege firms. The combination of the two must equal the mentor firm's overall accomplishment toward the applicable goal(s).

\* \* \* \* \*

(h) The mentor firm must be afforded the opportunity to explain the decline in small business subcontract awards before imposition of any such limitation on credit.

\* \* \* \* \*

**I-111 [Amended]**

16. Appendix I to Chapter 2 is amended in Section I-111 as follows:

a. In paragraph (a)(1) by removing "SDB" and adding in its place "applicable";

b. In paragraph (a)(2)(i) by removing "SDB subcontract" and adding in its place "applicable subcontracting";

c. In paragraph (a)(3)(i) by removing "SDB" and adding in its place "applicable subcontracting", and by removing the "a" before the word "protege"; and

d. In paragraph (c)(1) by removing "SDB" and adding in its place "applicable".

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**DEPARTMENT OF DEFENSE**

**48 CFR Parts 226 and 252**

[DFARS Case 2000-D024]

**Defense Federal Acquisition Regulation Supplement; Utilization of Indian Organizations and Indian-Owned Economic Enterprises**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8022 of the DoD Appropriations Act for Fiscal Year 2001. Section 8022 provides for incentive payments to DoD contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors.

**DATES:** Effective date: September 11, 2001.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 13, 2001, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil). Please cite DFARS Case 2000-D024 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2000-024.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelina Moy, (703) 602-1302.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule implements Section 8022 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106-259). Section 8022 provides funding for incentive payments to DoD contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors.

This rule revises DFARS 226.104 and adds a new clause at 252.226-7001. The new clause is similar to the clause at FAR 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, but contains the DoD requirement to provide for incentive payments to subcontractors at any tier.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because DoD already has been implementing the Indian Incentive Program through use of the clause at FAR 52.226-1, Indian Organizations and Indian-Owned Economic Enterprises. The FAR clause permits incentive payments to large and small contractors that use Indian organizations or enterprises as subcontractors. The new DFARS clause will expand the incentive payments to subcontractors at any tier. While this expansion is expected to benefit small businesses that award lower-tier subcontracts to Indian organizations or enterprises, the economic impact is not expected to be substantial. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000-D024.

**C. Paperwork Reduction Act**

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

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 8022 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106-259). Section 8022 provides that a subcontractor at any tier shall be considered a contractor for the purposes of being allowed additional compensation under Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544). Section 8022 became effective on August 9, 2000. DoD will consider comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 226 and 252**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 226 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 226 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 226—OTHER SOCIOECONOMIC PROGRAMS**

2. Section 225.104 introductory text is revised to read as follows:

**226.104 Contract clause.**

Use the clause at 252.226-7001, Utilization of Indian Organizations and Indian-Owned Economic Enterprises-DoD Contracts, in solicitations and contracts that—

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Section 252.226-7001 is added to read as follows:

**252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises-DoD Contracts.**

As prescribed in 226.104, use the following clause:

**Utilization of Indian Organizations and Indian-Owned Economic Enterprises-DoD Contracts (Sep 2001)**

(a) *Definitions.* As used in this clause—  
“Indian” means any person who is a member of any Indian tribe, band, group,

pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. Chapter 17.

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452 (c).

“Interested party” means a contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contract shall use its best efforts to give Indian organizations and Indian-owned economic enterprises the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless and interested party challenges its status or the Contracting Officer has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs, Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street NW, MS-2626-MIB, Washington, DC 20240-4000. The BIA will determine the eligibility and will notify the Contracting Officer. No incentive payment will be made—

(1) Within 59 working days of subcontract award;

(2) While a challenge is pending; or

(3) If a subcontractor is determined to be an ineligible participant.

(e)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee contract.

(iii) The target cost and ceiling price of a fixed-price incentive contract.

(iv) The price of a firm-fixed-price contract.

(2) The amount of the adjustment that may be made to the contract is 5 percent of the

estimated cost, target cost, or firm-fixed price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(3) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(4) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor.

(5) If the Contractor requests and receives an adjustment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the adjustment.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts that—

(1) Are for other than commercial items; and

(2) Are expected to exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(End of clause)

[FR Doc. 01-22424 Filed 9-10-01; 8:45 am]

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 252

[DFARS Case 2001-D008]

#### Defense Federal Acquisition Regulation Supplement; Iceland—Newly Designated Country Under Trade Agreements Act

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Iceland as a designated country under the Trade Agreements Act, as directed by the United States Trade Representative.

**EFFECTIVE DATE:** September 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0288; facsimile (703) 602-0350. Please cite DFARS Case 2001-D008.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the clauses at DFARS 252.227-7007, Buy American Act—Trade Agreements—Balance of Payments Program, and 252.225-7021, Trade Agreements. The rule adds Iceland to the list of designated countries under the Trade Agreements Act, as directed by the United States Trade Representative. Iceland joined the

World Trade Organization Government Procurement Agreement in April 2001.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2001-D008.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any 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 Part 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 252 is amended as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 252.225-7007 [Amended]

2. Section 252.225-7007 is amended in paragraph (a)(4) by adding, in alphabetical order, “Iceland” to the list of countries.

##### 252.225-7021 [Amended]

3. Section 252.225-7021 is amended in paragraph (a)(4) by adding, in alphabetical order, “Iceland” to the list of countries.

[FR Doc. 01-22421 Filed 9-10-01; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF DEFENSE

### 48 CFR Part 252

[DFARS Case 2000-D302]

#### Defense Federal Acquisition Regulation Supplement; Caribbean Basin Country End Products

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 211 of the United States—Caribbean Basin Trade Partnership Act and the determination of the United States Trade Representative as to which countries qualify for enhanced trade benefits under that Act.

**DATES:** Effective date: September 11, 2001.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 13, 2001, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil). Please cite DFARS Case 2000-D302 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0950. Please cite DFARS Case 2000-D302.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0288.

**SUPPLEMENTARY INFORMATION:**

##### A. Background

This interim rule amends the clauses at DFARS 252.225-7007, Buy America Act—Trade Agreements—Balance of Payments Program, and 252.225-7021, Trade Agreements, to remove Panama from the definition of “Caribbean Basin country” and to clarify which Caribbean Basin country products are subject to duty-free treatment. The rule implements Section 211 of the United States-Caribbean Basin Trade Partnership Act (Title II of Public Law 106-200) and determinations of the United States Trade Representative published at 65 FR 60236 on October 10, 2000; 65 FR 69988 on November 21, 2000; and 65 FR 78527 on December 15, 2000.

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