

safety washer kit, part number (P/N) CA-047-96-022-1, and reinstall the stabilizer bar damper link assemblies onto the helicopter in accordance with the Accomplishment Instructions contained in Bell Helicopter Textron, Inc. Alert Service Bulletin No. 47-96-22, dated August 16, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on May 9, 1997.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate,  
Aircraft Certification Service.*

[FR Doc. 97-13083 Filed 5-19-97; 8:45 am]

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## DEPARTMENT OF COMMERCE

### 15 CFR Part 3

[Docket No. 960828234-7093-04]

RIN 0690-AA25

### Empowerment Contracting

**AGENCY:** Department of Commerce.

**ACTION:** Proposed regulations; request for comment.

**SUMMARY:** The Department of Commerce is reissuing these proposed guidelines requesting public comment on policies and procedures intended to promote economy and efficiency in Federal procurement by grating qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general and severe economic distress. This actions taken in accordance with the President's Executive Order entitled, "Empowerment Contracting." The standards and procedures set forth in these proposed guidelines serve as the basis for a proposed revision to the Federal Acquisition Regulation ("FAR"): Information obtained from public comment on these guidelines will be used to help draft the final Commerce and FAR regulations.

**DATES:** Comments must be submitted on or before July 21, 1997.

**ADDRESSES:** Comments may be mailed to the Department of Commerce, Office of the Assistant General Counsel for Finance and Litigation, Room 5896, 14th and Constitution Street, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Joe Levine, 202-482-1071.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On May 21, 1996, President Clinton issued Executive Order 13005, "Empowerment Contracting" (the "Order"). The purpose of the Order is to strengthen the economy and secure broad-based competition for Federal contracts by fostering growth of Federal contractors in economically distressed communities. In the Order, the President charged the Secretary of Commerce (the "Secretary"), in consultation with the Secretaries of Housing and Urban Development, Labor and Defense; and the Administrators of the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, and the Office of Federal Procurement Policy, to develop policies and procedures to ensure that Federal agencies, when awarding contracts in unrestricted competitions, grant qualified large and small businesses appropriate price or evaluation incentives to encourage business activity in areas of general economic distress.

Specifically, the Order requires the Secretary to "develop policies and procedures to ensure that agencies, to the extent permitted by law, grant qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress, including a price or a non-price evaluation credit, when assessing offers for government contracts in unrestricted competitions, where the incentives would promote the policy set forth in this Order." The Order also calls upon the Secretary to (1) monitor the implementation and operation of the procedures developed; (2) ensure proper administration of the program and reduce the potential for fraud by intended beneficiaries; (3) develop a process to evaluate the effectiveness of the procedures developed; and (4) issue an annual report to the President on the status and effectiveness of the program. In addition, the Secretary must ensure that all policies, procedures and regulations developed pursuant to the Order minimize the administrative burden on

affected agencies and the procurement process.

On September 13, 1996, the Department published, in the **Federal Register**, its proposed Guidelines for implementing Executive Order 13005 (61 FR 48463). After several extensions, the period for public comment closed on January 6, 1997. These revised Guidelines, and the proposed amendments to the FAR, which were published on April 18, 1997 (62 FR 19200), for a 60 day public comment period, are based on comments received under that process and further internal analysis.

##### B. Public Comments

Comments were received from 40 commentators. They included businesses of all sizes, not-for-profit entities, industry and trade associations, Federal agencies, State and local governments and one member of Congress.

Federal agency comments included the following recommended revisions to the proposed guidelines:

(1) Firms should be required to have met the eligibility criteria prior to award of contracts. Eligibility based on prospective criteria will raise monitoring and compliance problems.

(2) If firms are required to meet the eligibility criteria prior to award of contracts, challenges to their status can be resolved prior to award.

(3) The initial test phase of six months is too short. It should be eighteen months.

(4) The third test of significant economic activity, "ownership", should be deleted as not relevant.

(5) Criteria should apply to areas, not an area.

(6) The areas of general economic distress should include labor surplus areas.

(7) The criteria for "eligibility" should not have ranges, but rather a fixed percentage and higher targets.

(8) The threshold for applicability is too low. It should be \$1 million.

(9) Qualification should be based on pre-certifications, not a "showing".

(10) The incentives should be revised to reflect the increasing number of "best value" awards.

(11) The Department of Commerce needs to establish regulations to cover challenges of eligibility.

(12) The preferences/incentives should not be cumulative with incentives of other programs implemented through the procurement system. To allow cumulative preferences will encourage "front" companies.

(13) The incentives are too high. The application of cumulative incentives

will have an adverse impact on agency budgets.

A number of commentors suggested that special treatment be afforded to firms located in areas with particularly high levels of economic distress.

Other commentors, including several not-for-profits, expressed support for the program and suggested various technical adjustments. These comments included such recommendations as:

(1) The subcontracting criterion of 15% for the previous six months is too high as a criterion for significant economic activity.

(2) Employment percentages of 40% to 50% are achievable within the eligible areas.

(3) Certification and challenges should be delegated to local government economic agencies.

(4) The \$100,000 threshold is too high. A lower threshold would offer more opportunities to small businesses.

(5) The incentives should be higher.

(6) Monitoring is essential to the success of the program.

(7) Firms track their data on a yearly basis, therefore, a six month first phase is inadequate.

(8) The definition for "not-for-profit" should be expanded to include government units, universities, and hospitals.

(9) Credit should be given for banking with minority firms.

(10) Preferences should be given to business enterprises owned by American Indian tribes, Alaskan natives, tribal or native-American corporations, and tribal organizations.

### C. Guideline Revisions

Revisions have been made to the guidelines that respond to many of these comments. These changes will enhance the program while remaining consistent with the goals, policies and provisions of Executive Order 13005.

#### I. General

The guidelines have been reformatted to become a new part 3 to 15 CFR.

#### II. Definitions

The definitions pertaining to eligibility have been revised to refer to areas, rather than an area, to allow businesses to receive credit for economic activity in any eligible area.

Two additional definitions have been added. An "area of severe economic distress", is defined as any census tract that has a poverty rate of at least 50%. A new category of firm, identified as an "eligible business", has also been established. An eligible business is a business, regardless of size, that meets any one of the three "significant" tests

in an area of severe economic distress. These provisions recognize the goal of encouraging business activity in areas of very high poverty. The 50% poverty rate was chosen to set a higher standard for relaxed eligibility requirements for such businesses, because the benefit of relaxed qualification standards is appropriate only in areas of substantial deprivation. Initiating and sustaining private activity in areas of severe distress is essential to the economic recovery of those areas and it is felt that only through special consideration could such areas receive the benefits intended by this program.

Two separate processes have been established for firms to qualify for preferences. One process will enable business to qualify by self-certifying that they will meet prospective eligibility criteria. Such firms will be subjected to detailed reporting and audit requirements, and will be required to pay preference recoupment should they not meet the required levels of performance. In addition, the definitions were modified to measure the overall contribution of the business to economic activity in eligible areas, rather than tying such measures to a particular contract. Public comment is particularly requested on this change in measurement standard.

A second process was added to allow businesses to seek pre-qualification of eligibility to receive incentives under this program. For this new process the definitions are written to measure the businesses impact in eligible areas during the previous six months. This process was established to accommodate situations, such as provision of supplies and other manufactured items, where the product being sold was already in inventory, and sealed bid awards, where detailed reporting and post performance audits are not the norm.

Finally, the definitions pertaining to "significant physical presence" were revised to measure the number of employees working in eligible areas. It was decided that the original definition, which merely measured the percentage of physical plant in eligible areas, created too large a loophole in situations where firms might have large amounts of land devoted to such things as warehouses, storage and garages, where very little time was spent by employees.

#### III. Eligibility Processes

The processes under which businesses will establish their eligibility have been added. Firms seeking to self-certify will have to prepare plans setting forth how they plan to attain the necessary economic activity in eligible

areas. The Department of Commerce, on its own initiative, or in response to challenges, will rule on the achievability of these plans. Firms seeking pre-qualification will submit the information required for the Department to decide on their request for pre-qualification.

#### IV. Challenges

An outline of the procedures the Department proposes to utilize to handle challenges is now set forth. Comments on its appropriateness, and any alternative mechanism are solicited.

#### V. Applicability

The simplified acquisition threshold (currently \$100,000) has been retained. Any adjustment below this amount would create an administrative burden on agencies that would greatly outweigh the potential benefits of the program. No sound reason was perceived for raising the threshold for applicability.

#### VI. Incentive Structure

The comments regarding elimination of cumulative incentives have not been accepted. The Order requires that the incentives of this program be applied in addition to any incentives available under already existing programs. This provision was included to comply with the Administration's policy thrust that the Empowerment Contracting Program is to be used by all types of qualifying businesses in distressed areas, and not to negatively impact existing preference programs. Adding this Program and not allowing accumulation with other preferences would have a negative impact on businesses eligible for other preferences. A price preference of up to 10% or an evaluation preference of up to 15% will be available. The incentive provisions have been modified to accommodate the use of non-numeric selection procedures.

#### VII. Phased Implementation

In response to several comments, the length of the first phase has been revised from 6 months to 18 months. This longer period for phase one will allow for accumulation of a larger base of data regarding the effectiveness of the Program. Review of phase one will begin after 12 months. Eleven two digit Standard Industrial Code (SIC) major group identifiers have been selected for inclusion in phase one. These SIC codes were selected because they represent areas of business which are likely to have viability in eligible areas. Several were suggested by commentors. They represent a sufficiently broad base of activity that will facilitate matching the needs of a wide range of Federal

agencies with potential sources in eligible areas.

The goal of the first phase is to see if the Program is most effective luring current government contractors to distressed areas, luring businesses in growth industries to distressed areas, or encouraging sales for businesses located in distressed areas. Using a broad array of contracts in various industries over an 18 month period, will provide information to refine and expand the program.

#### D. Classification

It has been determined that these proposed guidelines are significant for purposes of Executive Order 12866 dated September 30, 1993. This is a major rule under 5 U.S.C. 804. Because these proposed guidelines relate to a matter of public property, loans, grants, benefits, or contracts, they are exempted from all the procedural requirements of the Administrative Procedure Act (5 U.S.C. 553). Because notice and comment are not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and was not done for purpose of the Regulatory Flexibility Act. However, an Initial Regulatory Flexibility Analysis (IRFA) was prepared in connection with the proposed FAR amendments and may be obtained from the FAR Secretariat.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid control number. This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. A request for approval of the paperwork burdens has been submitted to the Office of Management and Budget. These relate to the pre-qualification process, the self-certification process and the challenge procedures. These requirements are estimated to take, respectively, eight, two, and one hours, including the time to gather records, make copies, and mail documents to the Department of Commerce.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including

through the use of automated collection techniques or other forms of information technology. Comments on the collection of information burden may be sent to Joseph Levine, Room 5896, U.S. Department of Commerce, Washington DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503.

#### List of Subjects in 15 CFR Part 3

Business and industry, Government procurement.

Therefore, it is proposed that a new 15 CFR part 3 be added to read as follows:

#### PART 3—EMPOWERMENT CONTRACTING

Sec.

- 3.01 Purpose.
- 3.02 Definitions.
- 3.03 Eligible areas.
- 3.04 Self-certification of eligibility.
- 3.05 Pre-qualification for eligibility.
- 3.06 Challenges—self-certification.
- 3.07 Challenges—pre-qualification.
- 3.08 Applicability.
- 3.09 Incentive structure.
- 3.10 Monitoring and evaluation.
- 3.11 Phased implementation of the Program.

**Authority:** Executive Order 13005 (61 FR 26069, May 24, 1996).

##### § 3.01 Purpose.

The purpose of this part is to set forth the policies and procedures applicable to the Empowerment Contracting Program established by Executive Order 13005.

##### § 3.02 Definitions.

###### (a) General.

(1) *Agency* means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered independent regulatory agencies as defined in 44 U.S.C. 3502(10).

(2) *Area of general economic distress* means, for all urban and rural communities, any census tract that has a poverty rate of at least 20 percent or any designated Federal Empowerment Zone, Supplemental Empowerment Zone, Enhanced Enterprise Community, or Enterprise Community. *Area of general economic distress* also means any rural area or Indian reservation that currently meet the criteria for designation as a redevelopment area under section 401(a) of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161(a)), as set forth at 13 CFR 301.2 (loss of population); 13 CFR 301.4 (Indian Lands) and 13 CFR 301.7 (special impact areas).

(3) *Area of severe economic distress* means any census tract that has a poverty rate of at least 50 percent.

(4) *Business* means the legal entity responsible for performance of the contract for which a preference is sought.

(5) *Qualified small business* means a small for-profit or not-for-profit trade or business that:

(i) Employs a significant number of residents from areas of general economic distress;

(ii) Has a significant physical presence in areas of general economic distress; or

(iii) Has a direct impact on generating significant economic activity in areas of general economic distress.

(6) *Qualified large business* means a large for-profit or not-for-profit trade or business that:

(i) Employs a significant number of residents from areas of general economic distress; and

(ii)(A) Either has a significant physical presence in areas of general economic distress or

(B) Has a direct impact on generating significant economic activity in areas of general economic distress.

(7) *Qualified eligible business* means any business that meets one of the following criteria:

(i) Employs a significant number of residents from areas of severe economic distress;

(ii) Has a significant physical presence in areas of severe economic distress; or

(iii) Has a direct impact on generating significant economic activity in areas of severe economic distress. (See §§ 3.04(b)(4) and 3.05(b)(4) for qualification procedures.)

(8) *Small Business* is defined by the definitions and procedures set forth by the Small Business Administration for determining size eligibility for government procurements. (13 CFR 121.901–911).

(9) *Small not-for-profit businesses*—Notwithstanding 13 CFR 121.403 (the SBA regulation that defines "business or concern" to mean for-profit entities) size determinations for not-for-profits entities will follow the same procedures as those of for-profit entities, i.e., the Standard Industrial Code (SIC) of the procurement will govern.

(10) *Large business* means any business that is not a small business.

(b) *Definitions applicable to Pre-Qualification.* The following definitions apply to businesses seeking pre-qualification based on their current operations:

(1) *Employs a significant number of residents from the area.* This means a

business which, during the six months preceding the date of its request for pre-qualification, has expended at least 25 percent of its total labor costs in wages and benefits to residents from areas of general economic distress.

(2) *Has a significant physical presence in the area.* This means a business with physical plant(s) in areas of general economic distress where, for the six months preceding the date of its request, at least 25 percent of the employees of the business perform their job. Employees will be considered to perform their job at the location where they spend the most time working, so long as it is at least 6 hours per work week.

(3) *Has a direct impact on generating significant economic activity in the area.* This means a business which:

(i) During the six months preceding the date of its request for pre-qualification, has expended at least 50 percent of its total labor costs in wages and benefits to residents from areas of general economic distress; or

(ii) During the six months prior to submitting its request for pre-qualification, has incurred at least 25 percent of its expenses on goods, materials, and services from firms located in areas of general economic distress.

(c) *Definitions for Self-Certification.* The following definitions apply to businesses which seek to self-certify their eligibility based on future operations:

(1) *Employs a significant number of residents from the area.* This means a business which, during the period of performance of the contract, will expend at least 25 percent of its total labor costs in wages and benefits to residents from areas of general economic distress.

(2) *Has a significant physical presence in the area.* This means a business with physical plant(s) in areas of general economic distress where, during the period of performance of the contract, at least 25 percent of the employees of the business will perform their job. Employees will be considered to perform their job at the location where they spend the most time working, so long as it is at least 6 hours per work week.

(3) *Has a direct impact on generating significant economic activity in the area.* This means a business which:

(i) During the period of performance of the contract, will expend at least 50 percent of its total labor costs in wages and benefits to residents from areas of general economic distress; or

(ii) During the period of performance of the contract, will incur at least 25

percent of its expenses on goods, materials, and services from firms located in areas of general economic distress.

### § 3.03 Eligible areas.

The Department of Commerce will maintain the official listing of eligible areas, based on the 1990 decennial Census of Population data. The listing shall contain the Census tract and block numbering for all eligible areas. This listing will be available on the internet at xxxxx@doc.gov.

### § 3.04 Self-Certification of Eligibility.

(a) When responding to solicitations, businesses may "self-certify" their qualifications at the time of submission of their proposal/bid, pursuant to the definitions set forth in § 3.02(c) of this part.

(b) At the time they self-certify their eligibility, businesses will be expected to have prepared a short description of their plan for achieving the requirements of this program. The description, which will be kept in their files, should contain sufficient detail to enable the Department to reach an informed judgment of the likelihood of the plan's success.

(1) For §§ 3.02(c)(1) and (c)(3)(i) the description should also identify the areas of general economic distress where employees will be recruited, the types of positions they will occupy, and evidence that those types of employees are available in sufficient quantity from those areas;

(2) For § 3.02(c)(2) the description should identify the areas of general economic distress where the physical plant(s) likely will be located, the types of plant that are required, evidence that such plants(s) are available, and the types and numbers of individuals who will be employed there;

(3) For § 3.02(c)(3)(ii) the description should identify the types of goods and services that likely would be purchased, and likely sources of those goods and services located in areas of general economic distress.

(4) For qualification under the definition of § 3.02(a)(7) as a "qualified eligible business", the information called for in paragraphs (b)(1)–(3) of this section should be supplied, substituting data for areas of severe economic distress for areas of general economic distress.

(c) The Department will conduct random reviews of the self-certifications submitted by businesses to verify their eligibility.

(d) If there is reason to believe that a business has submitted false information, withheld relevant

information, or otherwise violated federal law, the matter will be promptly referred to the Department's Inspector General for investigation.

### § 3.05 Pre-Qualification for Eligibility.

(a) Upon request, the Department will issue certificates that businesses have met the pre-qualification requirement(s) set forth in § 3.026(b) of this part. Such requests shall be submitted to the Office of Empowerment Contracting, Rm xxxx, U.S. Department of Commerce, Washington, DC 20230.

(b) In addition to having available the full details of the documentation needed to establish their eligibility, businesses shall submit the following with their request:

(1) For qualification under § 3.02(b)(1), a summary of the number of employees of the firm, the number of employees living in areas of general economic distress, the wages and benefits paid to each group in the last six months, and a list of eligible areas in which employees live;

(2) For qualification under § 3.02(b)(2), the addresses of each of the businesses plants, indicating which are in areas of general economic distress, a brief description of the activities conducted at each site, and the number of employees who perform their job at each site;

(3)(i) For qualification under § 3.02(b)(3)(i), business should submit the same information as called for under § 3.05(b)(1) of this part;

(ii) For qualification under § 3.02(b)(3)(ii), the names and addresses of all firms located in areas of general economic distress from which the business has purchased goods, materials or services in the past six months, the dollar total of such purchases, and the dollar total of all goods, materials and services purchased by the business in the past six months.

(4) For qualification under the definition of § 3.02(a)(7) as a "qualified eligible business", the information called for in paragraphs (b)(1)–(3) of this section should be supplied, substituting data for areas of severe economic distress for areas of general economic distress.

(c) Businesses may submit requests for pre-qualification under, one, several or all of the above. If it is determined that they meet the requirements for § 3.02(b)(1) and either § 3.02(b)(2), (b)(3)(ii); or they meet one of the alternative tests to be a qualified eligible business, the Department will issue a certificate of eligibility. If a business meets one or more of the requirements of § 3.02(b) but does not meet all the requirements to be a qualified large

business or qualified eligible business, the Department will certify as to its pre-qualification under the requirements(s) it has met. This last certification will qualify them for participation in the program if they are a small business in the context of a particular procurement.

(d) Businesses receiving such certificates of pre-qualification may submit copies thereof in lieu of the self-certification of eligibility, when responding to solicitations.

(e) Any business may seek pre-qualification, however, it is likely that solicitations will have limitations on subcontracting or similar requirements that could affect their eligibility to receive an award.

(f) Determinations as to whether a firm is a small business will be made in the context of each particular solicitation, based on SBA procedures and the four digit SIC code applicable to that solicitation

(g) Pre-qualification certificates will be effective for one year from their date of issue.

(h) businesses shall notify the Department of Commerce of material changes that would affect their eligibility status (e.g. plant closing or major scale backs that would significantly alter their employment data or location).

(i) Upon receipt of a request, the Department will publish notice in the **Federal Register** seeking public comment. The notice will include the name of the requesting business, the definition(s) for which it seeks to pre-qualify, and the principal eligible areas from which employees are employed, in which plant are located, and/or goods and services have been obtained.

(j) After preliminary review of a request the Department will request such additional information as it believes necessary and/or conduct a site visit. The Department will issue or deny a request within 30 business days of receipt, or provide the business with the reason for delay and an expected decision date.

(k) Appeals of denials of requests for pre-qualification must be submitted, in writing within 30 working days of the date of the denial. The appeal should be addressed to Office of xxxx and explain why the decision was in error. The appellant will be notified, in writing, of the Department's final decision, which will also be entered into the Empowerment Contracting Database.

(l) If there is reason to believe that a business has submitted false information, withheld relevant information, or otherwise violated federal law, the matter will be promptly

referred to the Department's Inspector General for investigation.

### **§ 3.06 Challenges—Self-Certification.**

(a) An offeror may protest a concern's self-certification by filing a protest with the contracting officer in accordance with the procuring agency's protest procedures.

(b) The contracting officer or the Department of Commerce may protest a concern's self-certification at any time. The Department of Commerce protests a concern's self-certification by filing directly with its Office of EC and notifying the contracting officer.

(c) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the Department of Commerce Office of EC, 14th and Constitution Ave. NW, Washington, DC. 20230. The contracting officer shall send to the Department of Commerce—

- (1) The protest;
- (2) The date the protest was received and a determination of timeliness;
- (3) A copy of the protested concern's submittals regarding self-certification; and
- (4) The date of bid opening or date on which notification of the apparently successful offeror was sent to unsuccessful offerors.

(d) When the contracting officer makes a written determination that award must be made to protect the public interest, award shall be made notwithstanding the protest.

(e) Upon receipt of notification that a challenge has been filed, the apparently successful offeror shall, by 5 p.m. of the business day following the date of receipt of the notice, submit to the Office of EC, rm xxxx U.S. Department of Commerce, Washington DC 20230, fax no. (202) 482-xxxx., a copy of its description called for in § 3.04(b). If the description is not received in a timely manner the challenge will be upheld.

(f) The Department will review the description, request any additional information it may require, and conduct on site verification if it is considered advisable, and allow the apparently successful offeror to submit such information as it may desire to refute the challenge. Based on this data the Department will determine whether the business is likely to achieve the performance required to qualify.

(g) The Department of Commerce, Office of EC, will determine the qualification status of the challenged offeror and notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The

determination is final for purposes of the instant acquisition, unless—

- (1) It is appealed; and
- (2) The contracting officer receives the Department of Commerce's decision on the appeal before award.

(h) If the contracting officer does not receive a Department of Commerce determination within 15 business days after the Department of Commerce's receipt of the protest, the contracting officer shall presume that the challenged offeror's self-certification is valid.

(i) A Department of Commerce determination may be appealed by the interested party whose protest has been denied; the concern whose status was protested; or the contracting officer. The appeal must be filed with the Department of Commerce's Office of EC within five business days after receipt of the determination. The appeal should contain significant evidence beyond that submitted previously.

(j) Following receipt of the appeal the Department will notify the other side (challenger or apparently successful offeror). Every effort will be made to issue a final decision prior to award of the contract in question.

(k) Both parties and the contracting officer will be notified, in writing, of the Department's final determination, which will be entered into the Empowerment Contracting Database.

### **§ 3.07 Challenges—Pre-Qualification.**

(a) The Department reserves the right to revoke certificates of pre-qualification if it determines that there are material changes in a businesses eligibility status. Accordingly, anyone who has information that might indicate such a change in status is encouraged to submit it, in writing, to the Office of EC, rm. xxxx. U.S. Department of Commerce, at any time. In addition, an offeror may protest a concern's pre-qualification by filing a protest with the contracting officer in accordance with the procuring agency's protest procedures. The contracting officer or the Department of Commerce may protest a concern's pre-qualified status at any time. The Department of Commerce protests a concern's pre-qualification by filing directly with its Office of EC and notifying the contracting officer.

(b) Upon receipt of a timely protest, or other adverse information, the Department will decide whether it merits further investigation. If further action is justified the Department will request the pre-qualified firm to submit a response to the adverse information and conduct such other inquiry as it deems appropriate to ascertain whether there has been a material change in

circumstances that would justify revoking the pre-qualification.

(c) For protests concerning particular awards, the provisions of paragraphs (c), (d), (g), (h), (i), (j) and (k) of § 3.06 of this part shall apply.

(d) For challenges not covered by paragraph (c) of this section, the Department of Commerce, Office of EC, will notify the challenged business and the challenger, of its decision.

(e) Decisions to revoke pre-qualifications will become effective upon issuance and entered into the Empowerment Contracting Database.

(f) Appeals of decisions covered by paragraph (d) of this section, must be submitted, in writing within 30 working days of the date of the decision. The appeal should be addressed to Office of EC and explain why the decision was in error. The appellant will be notified, in writing, of the Department's final decision, which will be also be entered into the Empowerment Contracting Database.

(g) If there is reason in believe that a business has submitted false information, withheld relevant information, or otherwise violated federal law, the matter will be promptly referred to the Department's Inspector General for investigation.

### § 3.08 Applicability.

Subject to the provisions contained in § 3.11, these guidelines shall apply to unrestricted competitions for contracts exceeding the simplified acquisition threshold, other than those where performance will not take place in the United States.

### § 3.09 Incentive Structure.

(a) Incentives, in the form of price or non-price, shall be available in contracts subject to these guidelines. While applying these incentives, the Contracting Officer/Source Selection Official shall have the discretion to determine the size and type of incentive to apply to any particular procurement.

(b) Preferences in the form of incentives shall represent a price preference of up to 10 percent or an evaluation credit of up to 15 percent. For procurements in which source selection will be made on a non-numerical basis, the Contracting Officer/Source Selection Official shall ensure that the incentive selected will be given sufficient weight to be meaningful.

(c) Any preference a business receives under these guidelines shall be added to the preferences it may receive pursuant to other statutory or regulatory programs.

### § 3.10 Monitoring and Evaluation.

Subject to the provisions of the "Phased Implementation of the Program" section of these guidelines, the Commerce Department, in conjunction with procuring agencies, shall monitor the process as follows:

(a) *Monitoring the Federal Procurement process.* We would expect that the benefit to the federal procurement system would begin to be realized during the latter years of phase two of the program. To assist in monitoring and evaluating the efficiency of this new program, agencies awarding contracts to qualified businesses shall provide the following information to the Department of Commerce:

(1) The number and dollar amount of solicitations in which an empowerment contracting preference was offered. This information will be broken down by SIC Major Group and by the use of the price evaluation preference and non-price evaluation factor;

(2) The contract numbers, dollar amounts, names of awardees, and price premiums paid (if identifiable) for awards made as a result of an empowerment preference. This information will be broken down by SIC Major Group;

(3) Comments on the advantages and disadvantages of the Empowerment Contracting Program, including comments on whether the program had any impact on the quality of supplies and services procured through its use.

(b) *Monitoring the impact on business development.* Evaluation criteria shall be established on national goals and objectives. A sample of businesses receiving contracts under the program would be examined with the following issues being addressed:

(1) Did the business locate or remain in a particular place so that it would be eligible for preferences under these guidelines?

(2) Did the business hire new workers or provide additional benefits to existing workers from eligible areas so that it would be eligible for preferences under these guidelines?

(3) Did the business purchase additional goods and services from firms located in eligible areas so that it would be eligible for preferences under these guidelines?

(4) Did the business propose to hire more workers in eligible areas as a result of bidding or proposing under the subject contract?

(5) Is this contract new work that the business would not have received but for this program?

(c)(1) *Monitoring the impact on distressed communities.* In order to examine impacts of the program on

distressed communities, outcomes should be measured in the context of local conditions and community priorities, as well as broad national goals. The local vision for a community's transformation should provide the principal criteria for measuring local outcomes. The monitoring and evaluation process should have both an initial and a longer term phase. The principal objectives of the initial phase would be to:

(i) Establish baseline measurements of demographics, economic indicators, physical infrastructure conditions and needs, and social conditions;

(ii) Identify local outcome measures and common national measures toward which long-term evaluation will be directed, including employment, crime, education, and poverty; and

(iii) Develop a strategy and mechanism for evaluating progress toward local and national goals over time.

(2) The longer-term evaluation should have the capacity to answer fundamental questions about the efficacy of targeted Federal contracting, specifically its ability to revitalize distressed communities and to improve the social and economic well-being of residents. This phase will examine such questions as:

(i) To what extent does the program create or improve the quality of jobs and economic opportunities in the distressed area?

(ii) To what extent does the program result in new businesses locating in the community or increased rates of business retention in the community?

(iii) To what extent does the program affect areas outside the distressed community by either connecting residents with opportunities in the larger community or by increasing growth in the larger areas?

(iv) How have the changes in these communities affected the jurisdictions in which they are located?

(v) How have areas (and residents) adjacent to the distressed communities been affected?

(vi) At what cost have these outcomes been achieved? The evaluation must ultimately provide an empirical basis for assessing program costs relative to benefits.

(vii) How effectively does the program interact with other government programs designed to promote the development of economically distressed communities?

(d) In monitoring the program, the Department of Commerce may request additional information to the extent that it deems appropriate.

### § 3.11 Phased Implementation of the Program.

(a) *First phase—eighteen month period.* The guidelines will apply initially, during a first phase of eighteen months' duration, only to contracts involving industries whose two digit Standard Industrial Classification ("SIC") Code major group identifiers are listed below. Each agency will establish procedures to ensure that the Empowerment Contracting program is applied to approximately 25 percent of the dollar value of its eligible procurements in these SIC codes, and will inform the Department of Commerce as to how it will ensure that this is done.

(b) At the end of the first year of the program, the Department of Commerce, in coordination with the agencies listed in Executive Order 13005, will evaluate the program and develop any necessary changes to improve performance. The revised procedures will become effective in the second phase.

(c) The two digit SIC code major group identifiers to which the first phase will apply are:

- 15—Construction
- 20—Food and Kindred Products
- 23—Apparel and Other Textile Products
- 25—Furniture and Fixtures
- 27—Printing and Publishing
- 30—Rubber and Miscellaneous
- 34—Fabricated Metal Products
- 42—Trucking and Warehousing
- 51—Wholesale Trade and Durable Goods
- 73—Business Services
- 87—Management Consulting Services

(d) *Second phase—further implementation.* Further implementation of the order will be instituted in the second phase of the program, which will begin after the first phase of the program has ended, and will extend for a period of 5 years. If the evaluation of phase one so justifies, the second phase of the program will be applied to a larger number of contracts within selected two digit SIC Code industries involved in competitive Federal procurements, consistent with efficient administration of the program and the development of new sources of supplies and services. Industries included in the second phase will be identified in advance of being included. The efficacy of the program will be monitored and evaluated during the second phase, subject to the criteria set forth in the "Monitoring and Evaluation" section of these guidelines. At the end of this five-year period, the Department of Commerce in consultation with the agencies designated in the Executive Order will ascertain whether the program is meeting its goals. Specifically, it will be

determined whether the program stimulated economic activity (through, among other things, job creation or new business investment) in areas of general economic distress and benefited the federal procurement system. If the program meets these objectives, it will be expanded to other selected industries for similar implementation and evaluation.

**William M. Daley,**

*Secretary of Commerce.*

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## DEPARTMENT OF LABOR

### Employment Standards Administration

#### 20 CFR Parts 718, 722, 725, 726 and 727

RIN 1215-AA99

#### Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Notice of Public Hearings

**AGENCY:** Employment Standards Administration, Labor.

**ACTION:** Proposed rule; Notice of Public Hearings.

**SUMMARY:** The Employment Standards Administration (ESA) will hold public hearings on its proposed regulations implementing the Black Lung Benefits Act. The proposed regulations reflect the program's suggestions for change in the processing and adjudication of individual claims for black lung benefits. The proposal also revises the criteria governing the responsibility of coal mine operators to secure the payment of benefits to their employees and reflects many decisions issued by the Benefits Review Board and U.S. courts of appeals over the past thirteen years. ESA proposed these regulations with the goal of improving services, streamlining the adjudication process and updating the regulations' content. The purpose of the hearing is to receive comments on the proposed changes.

**DATES:** A hearing will be held on Thursday, June 19, 1997, in Charleston, West Virginia, from 9 a.m. to 5 p.m. A second hearing will be held in Washington, DC with the procedures, date and time to be announced in a later notice. Requests to make oral presentations for the record at the first hearing should be received by Friday, June 13, 1997. Any unallotted time at the end of the hearing will be made available to persons present and wishing to speak who have not made timely requests.

**ADDRESSES:** The first hearing will be held at the Charleston Civic Center, 2nd Floor, 200 Civic Center Drive, Charleston, West Virginia 25301. Requests to make oral presentations should be sent to James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Room C-3520, Frances Perkins Building, 2000 Constitution Avenue, NW., Washington, DC 20210, FAX Number 202-219-8568.

**FOR FURTHER INFORMATION CONTACT:** James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, (202) 219-6692.

**SUPPLEMENTARY INFORMATION:** On January 22, 1997, ESA published a proposed rule (62 FR 3338-3435) intended to amend and revise the regulations implementing the Black Lung Benefits Act, subchapter IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The comment period originally closed on March 24, 1997, but was extended through May 23, 1997 by subsequent notice (62 FR 8201 (Feb. 24, 1997)). The comment period was extended once again through August 21, 1997.

The Department has received requests for public hearings from the United Mine Workers of America, the National Black Lung Association and the National Mining Association. These organizations represent both individuals and companies with a strong interest in the proposed regulations. The Department deems it desirable to provide the interested community with the opportunity to make oral comment on the proposed regulations.

The first hearing will be conducted in an informal manner by an ESA official. The formal rules of evidence will not apply. The Department may ask questions of expert or technical witnesses. The order of appearance of persons making presentations will be determined by the Agency. The presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and in ensuring the orderly progress of the hearing. The hearing will provide the opportunity for members of the public to make oral presentations. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Individuals with disabilities, who need special accommodations, should contact James L. DeMarce by Friday, June 13, at the address indicated in this notice.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. ESA will also accept additional written comments and other appropriate data