

the contracting officer] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment;

(ii) For DOD, NASA, and Coast Guard acquisitions, otherwise successful offers from historically black colleges or universities or minority institutions;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is equaled or exceeded (see section 25.402 of the Federal Acquisition Regulation (FAR));

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government; and

(v) For DOD acquisitions, otherwise successful offers of qualifying country end products (see sections 225.000-70 and 252.225-7001 of the Defense FAR Supplement).

(2) The factor shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

(c) *Waiver of evaluation adjustment.* A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waive the adjustment.

____ Offeror elects to waive the adjustment.

(d) *Agreements.* (1) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;

(ii) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business concern submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (Oct 1998). As prescribed in 19.1104, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulatory Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 97-06 which amends the Federal Acquisition Regulation (FAR). Further information regarding this rule may be obtained by referring to FAC 97-06 which precedes this document. This document may be obtained from the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501-4755.

Reform of Affirmative Action in Federal Procurement

FAC 97-06/FAR Case 97-004A. The interim rule amends FAR Parts 1, 12, 14, 15, 19, 33, and 52 to establish a mechanism to benefit small disadvantaged business concerns at the prime contract level. This mechanism is a price evaluation adjustment of up to ten percent in certain Standard Industrial Classification (SIC) Major Groups as determined by the Department of Commerce. This price evaluation adjustment conforms to the Department of Justice proposal to reform affirmative action in Federal

procurement and to regulations issued by the Small Business Administration regarding small disadvantaged business programs. This price evaluation adjustment is mandatory for those competitive procurements to which it applies. It does not, however, apply to several major categories of acquisition, including, for example, acquisitions within the simplified acquisition threshold, acquisitions set aside for small business, and acquisitions conducted pursuant to the 8(a) program.

Dated: June 23, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, and 134

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) amends both the eligibility requirements for, and contractual assistance provisions within, the SBA's 8(a) Business Development (8(a) BD) program. This final rule changes the name of the program from the Minority Small Business and Capital Ownership Development program to the 8(a) BD program to better reflect the purpose of the program. This rule streamlines the operation of the 8(a) BD program, eases certain restrictions perceived to be burdensome on Program Participants, clarifies certain eligibility requirements, and deletes obsolete regulations.

DATES: Effective Date: This rule is effective on July 30, 1998.

Compliance Dates: Subpart A applies to all applications for the 8(a) Business Development program pending as of July 30, 1998 and all 8(a) procurement requirements accepted by SBA on or after July 30, 1998. These rules do not apply to any appeals pending before SBA's Office of Hearings and Appeals. The revisions to 13 CFR part 121 apply with respect to all solicitations issued on or after June 30, 1998. Except for 13 CFR 134.408(c), the procedural revisions to 13 CFR part 134 apply to all appeals served or filed on or after June