

Item VIII—Compensation for Senior Executives (FAR Case 98-301)

This interim rule revises FAR section 31.205-6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated employees in management positions at each home office and each segment of the contractor." This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

Item IX—Technical Amendments

Amendments are being made at FAR 1.106, 25.402, 52.219-8, 53.228, and 53.301-1418 in order to update references and make editorial changes.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-11 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97-11 are effective May 3, 1999, except for Items II, VIII, and IX, which are effective March 4, 1999.

Eleanor R. Spector,

Director, Defense Procurement.

Edward C. Loeb,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Tom Luedtke,

Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52

[FAC 97-11; FAR Case 96-013; Item I]

RIN 9000-AH97

Federal Acquisition Regulation; Review of FAR Representations

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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove or reduce certain requirements for representations and other statements from offerors and contractors.

EFFECTIVE DATE: May 3, 1999.

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 97-11, FAR case 96-013.

SUPPLEMENTARY INFORMATION:**A. Background**

This case was initiated in response to requests from industry to eliminate representations required by the FAR that place an unnecessary burden on offerors or contractors. A proposed rule was published in the **Federal Register** on May 7, 1998 (63 FR 25382), with comments requested by July 6, 1998. Comments were received from 4 respondents and were considered in formulation of the final rule. The final rule is not substantively different from the proposed rule. This rule—

1. Deletes the clause at 52.214-17, Affiliated Bidders;
2. Reduces the information collection requirements associated with the clauses at 52.204-5, Women-Owned Business; 52.212-3, Offeror Representations and Certifications—Commercial Items; 52.214-21, Descriptive Literature; 52.228-9, Cargo Insurance; and 52.241-1, Electric Service Territory Compliance Representation; and

3. Makes editorial changes to the clauses at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises; 52.227-15, Representation of Limited Rights Data and Restricted Computer Software; 52.228-8, Liability and Insurance—Leased Motor Vehicles; and 52.232-12, Advance Payments.

The FAR uses many different terms to express affirmation by the contractor, such as "state," "represent," "affirm," "declare," "warrant," and "certify."

41 U.S.C. 425, as amended by Section 4301(b)(1) of Public Law 104-106, restricts the inclusion of nonstatutory certification requirements in the FAR. This law was apparently enacted in response to industry perception that a certification requires a high level of attention within the company, may entail personal accountability of the signing official, and is more likely to be subject to criminal prosecution. Changes were made to the FAR under FAR case 96-312 to comply with this statute.

As has already been established in FAR case 96-312, all other forms of contractual affirmation (e.g., statements, representations, affirmations, declarations, or warranties) are not certifications subject to the statutory restrictions of 41 U.S.C. 425 (see GAO Decision B-278404.2). The other terms of affirmation, despite subjective shades of meaning, are essentially synonymous and are not intended to imply gradations in the level of contractual requirement.

Moreover, the implied difference in level of review for certifications as opposed to other forms of affirmation does not indicate a difference in the Government expectation of truthfulness or accuracy. The Government relies on information provided by the contractor, whether the contractor says "I certify," "I represent," "I state," or simply checks a block. If the information turns out to be false, then the Government may take action under the False Statements Act and may assert its right to other remedies.

Because the use of multiple terms of affirmation other than "certification" may convey unintended differences of meaning, it is our goal in the future to use more simple and consistent terminology. However, some of the terminology changes in the proposed rule were interpreted as a substantive change to the requirements of the clause, implying a reduction in the effectiveness of the commitment by the contractor. Therefore, in the final rule, we do not make any changes to the FAR clauses at 52.216-2, 52.216-3, 52.222-43, 52.222-44, and 52.229-3 because the only proposed change was

substitution of an essentially similar term, just to standardize terminology.

Changes to the clause at 52.225-10, Duty-Free Entry, are deferred to FAR case 97-024, Part 25 Rewrite.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 it does not significantly alter the type of information to be provided to the Government under the amended provisions and clauses.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply. This rule will result in a reduction of 119,150 hours in the information collection requirements approved under the following Office of Management and Budget (OMB) Control Numbers:

9000-0018, Certification of Independent Price Determination and Parent Company and Identifying Data (Deletion of 52.214-17, Affiliated Bidders, reduction from 25,700 hours to approximately 12,850 hours);

9000-0039, Descriptive Literature (Revision of 52.214-21, Descriptive Literature, reduction from 1,334 hours to approximately 1,254 hours);

9000-0136, Solicitation/Contract/Order for Commercial Items (Revision of 52.212-3, Offeror Representations and Certifications—Commercial Items, reduction from 7,500,000 to approximately 7,394,050 hours); and

9000-0126, Electric Service Territory Compliance Representation (Revision of 52.241-1, Electric Service Territory Representations, reduction from 500 hours to approximately 230 hours).

Although OMB Clearance Number 9000-0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification—FAR case 95-307, ostensibly covers FAR clause 52.204-5, Women-Owned Business, the estimated burdens for that clearance appear to be based on the information collection requirements associated with use of the DUNS number. Therefore, although revisions to 52.204-5 will significantly reduce the number of responses required, we do not estimate

any impact on the hours approved under 9000-0145.

List of Subjects in 48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by removing the FAR segment "52.214-17" and its corresponding OMB Control Number "9000-0018"; and by adding, in numerical order, the following entry:

1.106 OMB approval under the Paperwork Reduction Act.

FAR segment	OMB control number
52.212-3	9000-0136

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.603 is amended by revising paragraph (b) to read as follows:

4.603 Solicitation provisions.

(b) The contracting officer shall insert the provision at 52.204-5, Women-Owned Business (Other Than Small Business), in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold, if the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

4. Section 12.503 is amended by revising paragraph (b)(5) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(b) * * *

(5) 49 U.S.C. 40118, Requirement for a clause under the Fly American provisions (see 47.405).

PART 14—SEALED BIDDING

14.201-6 [Amended]

5. Section 14.201-6 is amended by removing and reserving paragraph (k).

14.405 [Amended]

6. Section 14.405 is amended in paragraph (d)(2) by adding "and" at the end of the sentence; by removing paragraph (e) and redesignating paragraph (f) as (e).

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.103 [Amended]

7. Section 26.103 is amended in paragraphs (a), (b), and (e) by removing "self-certification" and adding "representation" in its place.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.404 [Amended]

8. Section 27.404 is amended in the second sentence of paragraphs (d)(2) and (e)(3) by removing the word "representation" and adding "provision" in its place.

9. Section 27.409 is amended by revising the first sentence of paragraph (g) to read as follows:

27.409 Solicitation provisions and contract clauses.

(g) In accordance with 27.404(d)(2), if the contracting officer desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation, the contracting officer shall insert the provision at 52.227-15, Representation of Limited Rights Data and Restricted Computer Software, in any solicitation containing the clause at 52.227-14, Rights in Data—General. * * *

PART 32—CONTRACT FINANCING

10. Section 32.805 is amended by revising paragraph (a) to read as follows:

32.805 Procedure.

(a) *Assignments.* (1) Assignments by corporations shall be—

(i) Executed by an authorized representative;

(ii) Attested by the secretary or the assistant secretary of the corporation; and

(iii) Impressed with the corporate seal or accompanied by a true copy of the resolution of the corporation's board of directors authorizing the signing representative to execute the assignment.

(2) Assignments by a partnership may be signed by one partner, if the assignment is accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership.

(3) Assignments by an individual shall be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths.

* * * * *

PART 41—ACQUISITION OF UTILITY SERVICES

11. Section 41.201 is amended by removing the last two sentences of paragraph (e) and adding a sentence at the end to read as follows:

41.201 Policy.

* * * * *

(e) * * * Proposals from alternative electric suppliers shall provide a representation that service can be provided in a manner consistent with section 8093 of Public Law 100-202 (see 41.201(d)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.204-5 is revised to read as follows:

52.204-5 Women-Owned Business (Other Than Small Business).

As prescribed in 4.603(b), insert the following provision:

Women-Owned Business (Other Than Small Business) (May 1999)

(a) *Definition. Women-owned business concern*, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program*

Representations, of this solicitation.] The offeror represents that it is, is not a women-owned business concern.

(End of provision)

13. Section 52.212-3 is amended by revising the date of the provision; in paragraph (a) of the provision in the definition "Women-owned business concern," by removing the words "the stock of which" and adding "its stock"; by revising paragraphs (c)(2), (c)(3), and (c)(4); and in the introductory text of paragraph (d) by removing "Certifications and representations" and adding "Representations" to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (May 1999)

* * * * *

(c) * * *

(2) *Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents, for general statistical purposes, that it is, is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) *Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents that it is, is not a women-owned small business concern.

Note: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

(4) *Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents that it is, is not a women-owned business concern.

* * * * *

52.214-17 [Reserved]

14. Section 52.214-17 is removed and reserved.

15. Section 52.214-21 is amended by revising the introductory text of the provision; and by revising the date, introductory text, and paragraph (d) of Alternate I to read as follows:

52.214-21 Descriptive literature.

As prescribed in 14.201-6(p)(1), insert the following provision:

* * * * *

Alternate I (May 1999). As prescribed in 14.201-6(p)(2), add the following paragraphs (d) and (e) to the basic provision.

(d) The Contracting Officer may waive the requirement for furnishing descriptive literature if the bidder has supplied a product the same as that required by this solicitation

under a prior contract. A bidder that requests a waiver of this requirement shall provide the following information:

Prior contract number _____

Date of prior contract _____

Contract line item number of product supplied _____

Name and address of Government activity to which delivery was made _____

Date of final delivery of product supplied _____

* * * * *

16. Section 52.219-1 is amended by revising the provision date; in the parenthetical of paragraphs (b)(2) and (b)(3) of the provision by adding "the" after the word "if"; in paragraph (c) by revising "Woman-owned" to read "Women-owned"; and by revising the introductory text of paragraph (d)(2) to read as follows:

52.219-1 Small Business Program Representations.

* * * * *

Small Business Program Representations (May 1999)

* * * * *

(d) * * *

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

* * * * *

52.219-21 [Amended]

17. Section 52.219-21 is amended by revising the provision date to read "(May 1999)"; and by removing the statement "Offeror represents as follows:" which follows the first parenthetical.

52.226-1 [Amended]

18. Section 52.226-1 is amended by revising the clause date to read "(May 1999)"; and in the first sentence of paragraph (c)(1) of the clause by removing "self-certification" each time it is used (twice) and adding "representation" in its place.

19. Section 52.227-15 is revised to read as follows:

52.227-15 Representation of Limited Rights Data and Restricted Computer Software.

As prescribed in 27.409(g), insert the following provision:

Statement of Limited Rights Data and Restricted Computer Software (May 1999)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery

requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227-16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(b) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227-14, Rights in Data—General, the offeror shall complete paragraph (c) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(c) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

Note: "Limited rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights in Data—General."

(End of provision)

20. Section 52.228-8 is amended by revising the introductory paragraph, the clause date, and paragraph (e) of the clause to read as follows:

52.228-8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in 28.312, insert the following clause:

Liability and Insurance—Leased Motor Vehicles (May 1999)

* * * * *

(e) The contract price shall not include any costs for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)

21. Section 52.228-9 is revised to read as follows:

52.228-9 Cargo Insurance.

As prescribed in 28.313(a), insert the following clause:

Cargo Insurance (May 1999)

(a) The Contractor, at the Contractor's expense, shall provide and maintain, during the continuance of this contract, cargo insurance of \$ _____ per vehicle to cover the value of property on each vehicle and of \$ _____ to cover the total value of the property in the shipment.

(b) All insurance shall be written on companies acceptable to _____ [insert name of contracting agency], and policies shall include such terms and conditions as required by _____ [insert name of contracting agency]. The Contractor shall provide evidence of acceptable cargo insurance to _____ [insert name of contracting agency] before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:

"It is a condition of this policy that the Company shall furnish—

(1) Written notice to _____ [insert name and address of contracting agency], 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) Evidence of any renewal policy to the address specified in paragraph (1) of this statement, not less than 15 days prior to the expiration of any current policy on file with _____ [insert name of contracting agency]."

(End of clause)

22. Section 52.232-12 is amended—
a. By revising the introductory text, the date, paragraph (j), and the introductory text of paragraph (o) of the clause;

b. In paragraph (o)(8) by removing "and warranties";

c. By revising the date of Alternate V; and

d. By revising the date, paragraph (g), the introductory text of paragraph (l), and paragraph (l)(8) of the clause following Alternate V.

The revised text reads as follows:

52.232-12 Advance Payments.

As prescribed in 32.412(a), insert the following clause:

Advance Payments (May 1999)

* * * * *

(j) *Insurance.* (1) The Contractor shall maintain with responsible insurance carriers—

(i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate insurance against liability on account of damage to persons or property; and

(iii) Adequate insurance under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—

(i) Maintain this insurance;

(ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (i) of this clause; and

(iii) Furnish any evidence with respect to its insurance that the administering office may require.

* * * * *

(o) *Representations.* The Contractor represents the following:

* * * * *

Alternate V (May 1999). * * *

* * * * *

Advance Payments Without Special Bank Account (May 1999)

* * * * *

(g) *Insurance.* (1) The Contractor shall maintain with responsible insurance carriers—

(i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate insurance against liability on account of damage to persons or property; and

(iii) Adequate insurance under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—

(i) Maintain this insurance;

(ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (f) of this clause; and

(iii) Furnish any evidence with respect to its insurance that the administering office may require.

* * * * *

(l) *Representations.* The Contractor represents the following:

* * * * *

(8) These representations shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

* * * * *

23. Section 52.241-1 is revised to read as follows:

52.241-1 Electric Service Territory Compliance Representation.

As prescribed in 41.501(b), insert a provision substantially the same as the following:

Electric Service Territory Compliance Representation (May 1999)

(a) Section 8093 of Public Law 100-202 generally requires purchases of electricity by any department, agency, or instrumentality of

the United States to be consistent with State law governing the provision of electric utility service, including State utility commission rulings and electric utility franchises or service territories established pursuant to State statute, State regulation, or State-approved territorial agreements.

(b) By signing this offer, the offeror represents that this offer to sell electricity is consistent with Section 8093 of Public Law 100-202.

(c) Upon request of the Contracting Officer, the offeror shall submit supporting legal and factual rationale for this representation.

(End of provision)

[FR Doc. 99-5203 Filed 3-3-99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 8, 12, 19, and 52

[FAC 97-11; FAR Case 98-013; Item II]

RIN 9000-AI29

Federal Acquisition Regulation; Very Small Business Concerns

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125).

DATES: *Effective Date:* March 4, 1999.

Applicability Date: This rule applies to solicitations issued on or after March 4, 1999.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 3, 1999, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.98-013@gsa.gov

Please cite FAC 97-11, FAR case 98-013 in all correspondence related to this case.

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 97-11, FAR case 98-013.

SUPPLEMENTARY INFORMATION:

A. Background

Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103-403) authorized the SBA Administrator to establish and carry out a pilot program for very small business (VSB) concerns. The Small Business Administration (SBA) published a final rule in the **Federal Register** on September 2, 1998 (63 FR 46640), amending 13 CFR parts 121 and 125 to establish a pilot program for VSB business concerns. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such VSB concerns.

Implementation of the program is limited to geographic areas served by 10 SBA district offices. A VSB concern is defined as a small business that has 15 or fewer employees together with average annual receipts that do not exceed \$1 million. Any procurement that has an anticipated dollar value exceeding \$2,500 but not greater than \$50,000 may be set aside for VSB concerns. A contracting officer must set aside for VSB concerns any such service or construction requirement that will be performed within the geographical boundaries served by a designated SBA district office if there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. In the case of a procurement for supplies, a contracting officer must set aside any such requirement for VSBs if the contracting office is located within the geographical area served by a designated SBA district, and there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district office. A decision chart to assist contracting personnel in making the

decision to set aside an acquisition for VSB concerns is located at <http://www.arnet.gov/References/VerySmall.html>. The program will expire on September 30, 2000, unless further extended through legislation.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may 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 Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103-403) called for the Small Business Administration (SBA) to conduct a pilot program to improve access to Federal Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain procurements for competition among such very small business (VSB) concerns. SBA's final rule implementing the pilot program was published in the **Federal Register** on September 2, 1998 (63 FR 46640).

The SBA provides, in its final rule, that the rule should have no effect on the amount of dollar value of any contract requirement or the number of requirements reserved for the small business set-aside program, since it is administered within and is a component of the small business set-aside program. Estimates of the number of entities to which the rule will apply were submitted by SBA in its regulatory flexibility analysis prepared for the final SBA rule. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-11, FAR Case 98-013), 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.*