

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)

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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.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the Federal Acquisition Regulation to revisions made to the Small Business Administration's small business size and Government contracting assistance regulations to incorporate the Very Small Business Set-Aside Pilot Program. The Small Business Administration's rule is effective on January 4, 1999. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 5, 8, 12, 19, and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 8, 12, 19, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 8, 12, 19, 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 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.207 is amended by adding paragraph (c)(2)(xviii); and by revising paragraph (d) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c)(2) * * *

(xviii) In the case of a very small business set-aside, identify the Designated Region (see subpart 19.9).

(d) *Set-asides.* When the proposed acquisition provides for a total, partial, or very small business set-aside, or a HUBZone small business set-aside, the appropriate CBD Numbered Note will be cited.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Section 8.404 is amended by revising paragraph (a) to read as follows:

8.404 Using schedules.

(a) *General.* When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart, the simplified acquisition procedures of Part 13 and the small business provisions of Part 19 do not apply, except for the provision at 13.303-2(c)(3). Orders placed pursuant to a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued pursuant to full and open competition (see 6.102(d)(3)). Therefore, when placing orders under Federal Supply Schedules, ordering offices need not seek further competition, synopsesize the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

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PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.303 [Amended]

4. Section 12.303 is amended at the end of paragraph (b)(1) by removing the semicolon and adding “, or set-aside for very small business concerns;”.

PART 19—SMALL BUSINESS PROGRAMS

5. Section 19.000 is amended at the end of paragraph (a)(8) by removing “and”; in paragraph (a)(9) by removing the period and adding “; and”; and by adding paragraph (a)(10) to read as follows:

19.000 Scope of part.

(a) * * *

(10) The Very Small Business Pilot Program.

* * * * *

6. Section 19.001 is amended by adding, in alphabetical order, the definition “Very small business concern” to read as follows:

19.001 Definitions.

* * * * *

Very small business concern means a small business concern—

(1) Whose headquarters is located within the geographic area served by a designated SBA district; and

(2) Which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million.

* * * * *

7. Section 19.102 is amended by redesignating paragraph “(g)” as “(h)”; and by adding a new paragraph (g) to read as follows:

19.102 Size standards.

* * * * *

(g) In the case of acquisitions set aside for very small business in accordance with 19.904, offerors may not have more than 15 employees and may not have average annual receipts that exceed \$1 million.

* * * * *

19.502-2 [Amended]

8. Section 19.502-2 is amended in the first sentence of paragraph (a) by removing “Each” and adding “Except for those acquisitions set aside for very small business concerns (see subpart 19.9), each”.

9. Subpart 19.9, consisting of sections 19.901 through 19.905, is added to read as follows:

Subpart 19.9—Very Small Business Pilot Program

Sec.

- 19.901 General.
- 19.902 Definition.
- 19.903 Applicability.
- 19.904 Procedures.
- 19.905 Solicitation provision and contract clause.

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Subpart 19.9—Very Small Business Pilot Program

19.901 General.

(a) The Very Small Business Pilot Program was established under Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103-403).

(b) 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 concerns.

(c) This pilot program terminates on September 30, 2000. Therefore, any award under this program must be made on or before this date.

19.902 Definition.

Designated SBA district means the geographic area served by any of the following SBA district offices:

(1) Albuquerque, NM, serving New Mexico.

(2) Los Angeles, CA, serving the following counties in California: Los Angeles, Santa Barbara, and Ventura.

(3) Boston, MA, serving Massachusetts.

(4) Louisville, KY, serving Kentucky.

(5) Columbus, OH, serving the following counties in Ohio: Adams, Allen, Ashland, Athens, Auglaize, Belmont, Brown, Butler, Champaign, Clark, Clermont, Clinton, Coshocton, Crawford, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Hancock, Hardin, Highland, Hocking, Holmes, Jackson, Knox, Lawrence, Licking, Logan, Madison, Marion, Meigs, Mercer, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Richland, Ross, Scioto, Shelby, Union, Van Wert, Vinton, Warren, Washington, and Wyandot.

(6) New Orleans, LA, serving Louisiana.

(7) Detroit, MI, serving Michigan.

(8) Philadelphia, PA, serving the State of Delaware and the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Carbon, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.

(9) El Paso, TX, serving the following counties in Texas: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves, and Terrell.

(10) Santa Ana, CA, serving the following counties in California: Orange, Riverside, and San Bernadino.

19.903 Applicability.

(a) The Very Small Business Pilot Program applies to acquisitions, including construction acquisitions, with an estimated value exceeding \$2,500 but not greater than \$50,000, when—

(1) In the case of an acquisition for supplies, the contracting office is located within the geographical area served by a designated SBA district; or

(2) In the case of an acquisition for other than supplies, the contract will be performed within the geographical area served by a designated SBA district.

(b) The Very Small Business Pilot Program does not apply to—

(1) Acquisitions that will be awarded pursuant to the 8(a) Program; or

(2) Any requirement that is subject to the Small Business Competitiveness Demonstration Program (see Subpart 19.10).

19.904 Procedures.

(a) A contracting officer shall set-aside for very small business concerns each acquisition that has an anticipated dollar value exceeding \$2,500 but not greater than \$50,000 if—

(1) In the case of an acquisition for supplies—

(i) The contracting office is located within the geographical area served by a designated SBA district; and

(ii) There is a reasonable expectation of obtaining offers from two or more responsible very small business concerns headquartered within the geographical area served by the designated SBA district that are competitive in terms of market prices, quality, and delivery; or

(2) In the case of an acquisition for services—

(i) The contract will be performed within the geographical area served by a designated SBA district; and

(ii) There is a reasonable expectation of obtaining offers from two or more responsible very small business concerns headquartered within the geographical area served by the designated SBA district that are competitive in terms of market prices, quality, and delivery.

(b) Contracting officers shall determine the applicable designated SBA district office as defined at 19.902. The geographic areas served by the SBA Los Angeles and Santa Ana District offices will be treated as one designated SBA district for the purposes of this subpart.

(c) If no reasonable expectation exists under paragraphs (a)(1)(ii) and (a)(2)(ii) of this section, the contracting officer shall document the file and proceed with the acquisition in accordance with Subpart 19.5.

(d) If the contracting officer receives only one acceptable offer from a responsible very small business concern in response to a very small business set-aside, the contracting officer should make an award to that firm. If there is no offer received from a very small business concern, the contracting officer shall cancel the very small business set-aside and proceed with the acquisition in accordance with Subpart 19.5.

19.905 Solicitation provision and contract clause.

The contracting officer shall use the clause at 52.219-5, Very Small Business Set-Aside, in solicitations and contracts if the acquisition is set aside for very small business concerns.

(a) The contracting officer shall use the clause at 52.219-5 with its Alternate I—

(1) In construction or service contracts; or

(2) When the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f)(4) and (5)).

(b) The contracting officer shall use the clause at 52.219-5 with its Alternate II when Alternate I does not apply, the acquisition is processed under simplified acquisition procedures, and the total amount of the contract does not exceed \$25,000.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.212-5 is amended by revising the clause date; and by redesignating paragraphs (b)(2) through (b)(8) as (b)(4) through (b)(10), and (b)(9) and (b)(10) as (b)(2) and (b)(3), respectively; and by revising newly designated paragraph (b)(4) of the clause to read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Mar 1999)

* * * * *

(b) * * *

____(4)(i) 52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

____(ii) Alternate I to 52.219-5.

____(iii) Alternate II to 52.219-5.

* * * * *

11. Section 52.219-5 is added to read as follows:

52.219-5 Very Small Business Set-Aside.

As prescribed in 19.905, insert the following clause:

Very Small Business Set-Aside (Mar 1999)

(a) *Definition.* *Very Small Business Concern*, as used in this clause, means a concern whose headquarters is located within the geographical area served by a designated SBA district (see 13 CFR 125.7(b)); which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million.

(b) *Eligibility.* (1) Only those firms headquartered in the

_____ Small Business Administration (SBA) district [Contracting Officer shall insert the applicable SBA designated district. If the geographic area is served by the SBA Los Angeles or Santa Ana District offices, list both] are eligible for this acquisition.

(2) Offers or quotations under this acquisition are solicited from very small business concerns only. Offers that are from other than an eligible very small business concern shall not be considered and shall be rejected. The offeror represents that it is an eligible very small business concern by submission of an offer or quotation.

(c) *Agreement.* A very small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. As used in this clause, the term *United States* includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia.

(End of clause)

Alternate I (Mar 1999). As prescribed in 19.905(a), delete paragraph (c) of the basic clause.

Alternate II (Mar 1999). As prescribed in 19.905(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A very small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by domestic firms in the United States. As used in this clause, the term *United States* includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11 and 52

[FAC 97-11; FAR Case 98-612; Item III]

RIN 9000-AI30

Federal Acquisition Regulation; Variation in Quantity

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 the requirement to include the clause at FAR 52.211-16, Variation in Quantity, in fixed-price solicitations and contracts that do not permit a variation in the quantity of supplies furnished under the contract.

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 Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-11, FAR case 98-612.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 11.703(a) to change the prescription for the clause at 52.211-16, Variation in Quantity. The revised prescription requires that the clause only be used if the contracting officer is authorizing a variation in the quantity of supplies to be furnished under fixed-price supply contracts or fixed-price service contracts that involve the furnishing of supplies. Currently the clause is required in all fixed-price supply contracts for supplies or for services that involve the furnishing of supplies. Where variations are not permitted, the clause is used with a "0%" permissible variation.

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 final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, 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 98-612), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 11 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 11 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 11—DESCRIBING AGENCY NEEDS

2. Section 11.703 is amended by revising paragraph (a) to read as follows:

11.703 Contract clauses.

(a) The contracting officer shall insert the clause at 52.211-16, Variation in Quantity, in solicitations and contracts, if authorizing a variation in quantity in fixed-price contracts for supplies or for services that involve the furnishing of supplies.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.211-16 is amended by revising the introductory paragraph to read as follows:

52.211-16 Variation in quantity.

As prescribed in 11.703(a), insert the following clause:

* * * * *

[FR Doc. 99-5205 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 13, 16, 32, and 52

[FAC 97-11; FAR Case 91-118; Item IV]

RIN 9000-AG49

Federal Acquisition Regulation; Electronic Funds Transfer

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 to adopt as final, with changes, the interim rule published in Federal Acquisition Circular 90-42 on August 29, 1996. The rule amends the Federal Acquisition Regulation (FAR) to address the use of electronic funds transfers (EFT) for Federal contract payments made after January 1, 1999, and to