

Service, 1849 C Street NW., (2253), Washington, DC 20240, telephone (202) 354-2269.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 16, 1990, President George Bush signed the Act into law. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, and cultural patrimony with which they are affiliated. Section 9 of the Act authorizes the Secretary of the Interior ("the Secretary") to assess a civil penalty against any museum that fails to comply with the requirements of the Act [25 U.S.C. 3007]. Such penalties must be assessed according to procedures established by the Secretary through regulation. An interim rule establishing civil penalty procedures was published in the **Federal Register** on January 13, 1997 (62 FR 1820), and went into effect on February 12, 1997. A final rule establishing civil penalty procedures was published in the **Federal Register** on April 3, 2003 (68 FR 16354), and went into effect on May 5, 2003. As published, the final rule contains an error that needs to be corrected.

*Need for Correction:* The correction clarifies the amendatory instruction to make it clear that the final rule published in the **Federal Register** on April 3, 2003 (68 FR 16354) replaces the interim rule published in the **Federal Register** on January 13, 1997 (62 FR 1820).

**List of Subjects in 43 CFR Part 10**

Administrative practices and procedure, Hawaiian Natives, Historic preservation, Indians—Claims, Museums, Reporting and record-keeping requirements.

■ Accordingly, the final rule amending title 43 CFR part 10 published April 3, 2003 (68 FR 16354) is corrected as follows:

**PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS**

The authority citation for Part 10 continues to read as follows:

**Authority:** 25 U.S.C. 3001 *et seq.*

In FR Doc. 03-7947 published on April 3, 2003, (68 FR 16354), make the following technical correction: On page 16360, in the second column, the amendatory instruction below the authority citation indicates that Part 10 is amended by "adding" § 10.12. The sentence is amended to read "Part 10 is amended by revising § 10.12 as follows:".

Dated: June 16, 2003.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03-16802 Filed 7-2-03; 8:45 am]

**BILLING CODE 4312-50-P**

**DEPARTMENT OF THE TREASURY**

**48 CFR Chapter 10**

**RIN 1505-AA89**

**Department of the Treasury Acquisition Regulation**

**AGENCY:** Office of the Procurement Executive, Department of the Treasury.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury ("Treasury") is amending the Department of the Treasury Acquisition Regulation (DTAR) in its entirety. Treasury has rewritten the DTAR into plain English. The DTAR includes both policy direction and regulatory guidance. Only regulatory guidance is being published. Treasury has also updated the DTAR to reflect changes to the Federal Acquisition Regulation (FAR) and to establish and encourage participation in the Treasury Mentor-Protégé Program.

**DATE:** August 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kevin Whitfield, Department of the Treasury, Office of the Procurement Executive, 1500 Pennsylvania Ave., NW., c/o 1310 G St., NW., Suite 400W, Washington, DC 20220. (202) 622-0248.

**SUPPLEMENTARY INFORMATION:**

I. Background

II. Final Action

III. Statutory and Executive Order Reviews

- A. Executive Order 12866
- B. Executive Order 12988
- C. Regulatory Flexibility Act
- D. Paperwork Reduction Act
- E. National Environmental Policy Act
- F. Executive Order 13132
- G. Unfunded Mandates Reform Act of 1995
- H. Treasury and General Government Appropriation Act, 1999

**I. Background**

This final rule amends the Department of the Treasury Acquisition Regulation (DTAR). The DTAR, as reissued, uses plain English to improve clarity and understanding; eliminates internal operating procedures that do not have a significant effect beyond Treasury; establishes the Treasury Mentor-Protégé Program and, eliminates coverage that is obsolete or duplicates the FAR. The DTAR is intended to be simple for contractors, offerors, and Treasury contracting personnel to use.

A proposed rule was published in the **Federal Register** (67 FR 76150-67156)

on December 11, 2002, providing for a 30 day comment period. There were no comments received regarding the proposed rule.

**II. Final Action**

This final rule will amend the Department of the Treasury Acquisition Regulation system. It uses plain English, eliminates internal operating procedures that do not have significant effect beyond Treasury, establishes the Treasury Mentor-Protégé Program, and eliminates coverage that is obsolete or duplicates the FAR.

**III. Statutory and Executive Order Reviews**

*A. Executive Order 12866*

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 as supplemented by Executive Order 13132, and is not a major rule under 5 U.S.C. 804; therefore no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

*B. Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Treasury has completed the required review and determined that this final rule meets the relevant standards of Executive Order 12988 as supplemented by Executive Order 13132.

*C. Regulatory Flexibility Act*

This final regulation does 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, and *et seq.* The analysis requirement of the Act does not apply if the agency certifies that the rule, if promulgated, will not have a significant impact on a substantial number of small entities. The Mentor-Protégé Program does apply to large business and small business firms that receive a form of incentive for assuming the role of mentor to small businesses, other small disadvantaged businesses, qualified HUBZone small businesses, small businesses owned and controlled by service disabled veterans, and small women-owned businesses. It is expected that the protégé entities would directly benefit from the forms of mentoring provided for in this rule.

The other revisions do not add any new requirements, but restate existing

requirements in plain English and provide consistency with the FAR.

#### *D. Paperwork Reduction Act*

This reissued DTAR contains information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) that were approved previously by OMB and assigned the contract numbers shown in DTAR Section 1001.106.

#### *E. National Environmental Policy Act*

This final rule does not individually or cumulatively have a significant impact on the human environment, as determined by Treasury's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, no environmental impact statement or environmental assessment is required pursuant to NEPA.

#### *F. Executive Order 13132*

Executive Order 13132 requires when formulating and implementing regulations, legislation, and any other policy actions that have federalism implications, that agencies must follow prescribed principles and criteria. Treasury has determined that this final rule does not contain federalism implications and would not preempt State laws.

#### *G. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to State, local or tribal governments, or to the private sector of \$100 million or more. This final rule would only affect private sector entities and the impact is less than \$100 million.

#### *H. Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriation, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This final rule does not have any impact on the autonomy or integrity of the family as an institution. Accordingly, Treasury concluded that it is not necessary to prepare a Family Policymaking Assessment.

### List of Subjects in 48 CFR Chapter 10

Government acquisition.

**Corey M. Rindner,**

*Director, Office of the Procurement Executive.*

■ Accordingly, the Department of the Treasury revises 48 CFR Chapter 10, to read as follows:

#### **CHAPTER 10—DEPARTMENT OF THE TREASURY**

##### **Subchapter A—General**

Part

- 1001 Department of the Treasury Acquisition Regulation (DTAR) System
- 1002 Definitions of Words and Terms
- 1003 Improper Business Practices and Personal Conflicts of Interest
- 1004 Administrative Matters

##### **Subchapter B—Competition and Acquisition Planning**

- 1005 Publicizing Contract Actions
- 1011 Describing Agency Needs

##### **Subchapter D—Socioeconomic Programs**

- 1019 Small Business Programs

##### **Subchapter E—General Contracting Requirements**

- 1028 Bonds and Insurance
- 1033 Protests, Disputes, and Appeals

##### **Subchapter H—Clauses and Forms**

- 1052 Solicitation Provisions and Contract Clauses

##### **Subchapter A—General**

#### **PART 1001—DEPARTMENT OF THE TREASURY ACQUISITION REGULATORY (DTAR) SYSTEM**

##### **Subpart 1001.1—Purpose, Authority, Issuance**

Sec.

- 1001.101 Purpose.
- 1001.104 Applicability.
- 1001.105 Issuance.
- 1001.105-1 Publication and code arrangement.
- 1001.105-2 Arrangement of regulations.
- 1001.105-3 Copies.
- 1001.106 OMB Approval under the Paperwork Reduction Act.

**Authority:** 41 U.S.C. 418b (a) and (b).

##### **Subpart 1001.1—Purpose, Authority, Issuance**

###### **1001.101 Purpose.**

This subpart establishes Chapter 10, the Department of the Treasury Acquisition Regulation (DTAR), within Title 48 of the Federal Acquisition Regulation (FAR) System. The DTAR contains policies and procedures that supplement FAR coverage and directly affect the contractual relationship between the Department of the Treasury and its business partners (e.g., prospective offerors/bidders and contractors). When FAR coverage is

adequate, there will be no corresponding DTAR coverage.

###### **1001.104 Applicability**

The FAR and DTAR apply to all acquisitions of supplies and services, which obligate appropriated funds. For acquisitions made from non-appropriated funds, the Senior Procurement Executive will determine the rules and procedures that will apply. The DTAR does not apply to the acquisitions of the U.S. Mint.

###### **1001.105 Issuance.**

###### **1001.105-1 Publication and code arrangement.**

The DTAR and its subsequent changes will be published in the **Federal Register** and codified in the Code of Federal Regulations (CFR). The DTAR will be issued as 48 CFR Chapter 10.

###### **1001.105-2 Arrangement of regulations.**

(a) *References and citations.* The DTAR is divided into the same parts, subparts, sections, subsections, and paragraphs as the FAR except that 10 or 100 will precede the DTAR citation so that there are four numbers to the left of the first decimal. Reference to DTAR material must be made in a manner similar to that prescribed by FAR 1.105-2(c).

###### **1001.105-3 Copies.**

Copies of the DTAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

###### **1001.106 OMB Approval under the Paperwork Reduction Act.**

OMB has assigned the following control numbers that must appear on the upper right-hand corner of the face page of each solicitation, contract, modification and order: OMB Control No. 1505-0081 (Offeror submissions), OMB Control No. 1505-0080 (Contractor submissions), and OMB Control No. 1505-0107 (Protests). OMB regulations and OMB's approval and assignment of control numbers are conditioned upon Treasury bureaus not requiring more than three copies (including the original) of any document of information. OMB has granted a waiver to permit the Department to require up to eight copies of proposal packages, including proprietary data, for solicitations, provided that contractors who submit only an original and two copies will not be placed at a disadvantage.

**PART 1002—DEFINITIONS OF WORDS AND TERMS****Subpart 1002.1—Definitions.**

Sec.  
1002.101 Definitions.

Authority: 41 U.S.C. 418b (a) and (b).

**Subpart 1002.1—Definitions.****1002.101 Definitions.**

*Bureau Chief Procurement Officer (BCPO)* means the senior acquisition person at each bureau's headquarters. Within the Internal Revenue Service, this may be the Director, Procurement or the Deputy Director, Procurement.

*Legal counsel* means the Treasury or bureau office providing legal services to the contracting activity.

*Senior Procurement Executive (SPE)* for the Department of the Treasury is the Director, Office of the Procurement Executive.

**PART 1003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST****Subpart 1003.9—Whistleblower Protections for Contractor Employees****1003.901 Definitions.**

Authority: 41 U.S.C. 418b (a) and (b).

**Subpart 1003.9—Whistleblower Protections for Contractor Employees****1003.901 Definitions.**

*Authorized official of an agency* means Treasury's SPE.

**PART 1004—ADMINISTRATIVE MATTERS****Subpart 1004.4—Safeguarding Classified Information Within Industry**

Sec.  
1004.470 Investigative Requirement for Contractors.  
1004.470—1 General.

Authority: 41 U.S.C. 418b (a) and (b).

**Subpart 1004.4—Safeguarding Classified Information Within Industry****1004.470 Investigative Requirements for Contractors.****1004.470—1 General.**

Contract employees not requiring access to classified information must meet the investigative requirements of Chapter II, Section 2 of TD P 71-10, Department of the Treasury—Security Manual.

**Subchapter B—Competition and Acquisition Planning****PART 1005—PUBLICIZING CONTRACT ACTIONS****Subpart 1005.2—Synopsis of Proposed Contract Actions**

Sec.  
1005.202 Definitions.

Authority: 41 U.S.C. 418(b) (a) and (b).

**Subpart 1005.2—Synopsis of Proposed Contract Actions****1005.202 Exceptions.**

(b)(1) The Office of Federal Procurement Policy and the Small Business Administration have extended the Pilot Program on Acquisition of Services from Small Businesses. It allows for a waiver of the synopsis requirement for services from competitive small businesses between \$25,000 and \$100,000. Contracting officers may waive the synopsis requirement after determining the following:

(i) Acquisitions covered by the waiver are for services (excluding those exempted from set-asides under the Small Business Competitiveness Demonstration Program) in amounts over \$25,000, but not exceeding the simplified acquisition threshold (\$100,000), of which supply items are expected to constitute less than 20 percent of the value of the contract;

(ii) The covered acquisitions will be set-aside for small businesses;

(iii) Quotes or offers for covered acquisitions will be solicited and obtained from a minimum of five small business concerns;

(iv) The Procurement Marketing and Access Network (PRO-Net) will be used to identify and solicit bids from a minimum of five small businesses; and

(v) If practicable, two sources not included in the previous solicitation for the same services will be solicited.

**PART 1011—DESCRIBING AGENCY NEEDS****Subpart 1011.1—Selecting and Developing Requirements Documents**

Sec.  
1011.103 Market acceptance.

Authority: 41 U.S.C. 418b (a) and (b).

**Subpart 1011.1—Selecting and Developing Requirements Documents****1011.103 Market Acceptance.**

(a) BCPOs can act on behalf of the head of the agency in this subpart only. BCPOs, under appropriate circumstances, require offerors to make the required demonstrations.

**Subchapter D—Socioeconomic Programs****PART 1019—SMALL BUSINESS PROGRAMS****Subpart 1019.2—Policies**

Sec.  
1019.202 Specific policies.  
1019.202—70 The Treasury Mentor-Protégé Program  
1019.202—70-3 Non-affiliation.  
1019.202—70-4 General policy.  
1019.202—70-5 Incentives for prime contractor participation.  
1019.202—70-7 Mentor firms.  
1019.202—70-8 Protégé firms.  
1019.202—70-9 Selection of Protégé firms.  
1019.202—70-10 Application process for mentor firms to participate in the program.  
1019.202—70-11 OSBD review and approval process of agreement.  
1019.202—70-12 Agreement contents.  
1019.202—70-13 Developmental assistance.  
1019.202—70-14 Obligation.  
1019.202—70-16 Solicitation provisions and contract clauses.

**Subpart 1019.7—The Small Business Subcontracting Program**

1019.708 Contract clauses.  
1019.708-70 Solicitation provisions and contract clauses.

**Subpart 1019.8—Contracting With the Small Business Administration (The 8(a) Program)**

1019.811 Preparing the contracts.  
1019.811-3 Contract clauses.

Authority: 41 U.S.C. 418b (a) and (b).

**Subpart 1019.2—Policies****1019.202 Specific policies.****1019.202-70 The Treasury Mentor-Protégé Program.****1019.202 Non-affiliation.**

For purposes of the Small Business Act, a protégé firm may not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance referred to in DTAR 1019.202-70-13 from such mentor firm under the Program.

**1019.202-70-4 General policy.**

(a) Eligible prime contractors, not included on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", that are approved as mentors will enter into agreements with eligible protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors or subcontractors.

(b) A firm's status as a protégé under a Treasury contract must not have an effect on the firm's eligibility to seek other contracts or subcontracts.

**1019.202-70-5 Incentives for prime contractor participation.**

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(E), Treasury is authorized to provide appropriate incentives to encourage subcontracting opportunities consistent with the efficient and economical performance of the contract. Proposed mentor-protégé efforts will be considered during the evaluation of such negotiated, competitive offers. Contracting officers must provide, as an incentive, a bonus score, not to exceed 5% of the relative importance assigned to the technical/management factors.

(b) A mentor's performance will be evaluated against the criteria described in DTAR 1052.219-75.

(c) Before awarding a contract that requires a subcontracting plan, the existence of a mentor-protégé arrangement, and performance (if any) under an existing arrangement, must be considered by the contracting officer in:

(1) Evaluating the quality of a proposed subcontracting plan under FAR 19.705-4; and

(2) Evaluating the contractor compliance with the subcontracting plans submitted in previous contracts as a factor in determining contractor responsibility under FAR 19.705-5(a)(1).

(d) Mentor-protégé arrangements may provide the government with greater assurance that a protégé subcontractor will be able to perform under the contract.

(e) The Office of Small Business Development (OSBD) Mentoring Award is a non-monetary award that will be presented (annually or as often as appropriate) to the mentoring firm providing the most effective developmental support of a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Director, Office of Small Business Development.

**1019.219-70-7 Mentor firms.**

A mentor firm may be either a large or small business, eligible for award of a Government contract that can provide developmental assistance to enhance the capabilities of protégés to perform as subcontractors. Mentors will be encouraged to enter into arrangements with protégés in addition to firms with whom they have established business relationships.

**1019.202-70-8 Protégé firms.**

(a) For selection as a protégé, a firm must be:

(1) A small business, women-owned small business, small disadvantaged business, small business owned and

controlled by service disabled veterans, or qualified HUBZone small business:

(2) "Small" in the NAICS for the services or supplies to be provided by the protégé under its subcontract to the mentor; and

(3) Eligible for receipt of Government contracts.

(b) Except for small disadvantaged business, or qualified HUBZone small business firms, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representations by potential protégé that they meet the specified eligibility requirements. The small disadvantaged business and HUBZone status eligibility and documentation requirements are determined according to FAR 19.304 and FAR 19.1303, respectively.

(c) Protégés may not have multiple mentors unless approved, in writing, by the Director, Office of Small Business Development (OSBD). Protégés participating in other agency mentor-protégé programs in addition to the Treasury Program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

**1019.708-70-9 Selection of protégé firms.**

(a) Mentor firms will be solely responsible for selecting protégé firms. The mentor is encouraged to identify and select the types of protégé firms listed in 1019.202-70-7. Mentor firms may have multiple protégés.

(b) The selection of protégé firms by mentor firms may not be protested. Any protest regarding the size or eligibility status of an entity selected by a mentor to be a protégé must be referred solely to Treasury's OSBD for resolution. Treasury, at its discretion, may seek an advisory opinion from the Small Business Administration (SBA).

**1019.202-70-10 Application process for mentor firms to participate in the program.**

(a) Firm interested in becoming a mentor firm may apply in writing to Treasury's OSBD. The application will be evaluated based upon the description of the nature and extent of technical and managerial support proposed as well as the extent of other developmental assistance in the form of equity investment, loans, joint-venture support, and traditional subcontracting support.

(b) A proposed mentor will submit the information listed in DTAR 1019.202-70-12 for inclusion in a mentor-protégé agreement.

**1019.202-70-11 OSBD review and approval process of agreement.**

(a) OSBD will review the information specified in DTAR 1019.202-70-12. The OSBD review will be completed no later than 30 calendar days after receipt.

(b) Upon completion of the review, the mentor may implement the developmental assistance program.

(c) An approved agreement will be incorporated into the mentor firm's contract(s) with Treasury.

(d) If the OSBD disapprove the agreement, the mentor may provide additional information for reconsideration. Upon finding deficiencies that the OSBD considers correctable, the OSBD will notify the mentor and provide a list of defects. Any additional information or corrections requested will be provided within 30 calendar days. The review of any supplemental material will be completed within 30 days after receipt by the OSBD. When submission of additional data is required during a proposal evaluation for a new contract award, shorter timeframes for submission, review and re-evaluation for approval may be authorized by the OSBD.

(e) The agreement defines the relationship between the mentor and protégé firms only. The agreement itself does not create any privity of contract between the mentor or protégé and Treasury.

**1019.202-70-12 Agreement contents.**

The contents of the agreement will contain:

(a) Names and addresses of mentor and protégé firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protégé firm, OSBD and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program;

(c) Procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement. The mentor must notify the OSBD and the contracting officer immediately upon receipt of such notice from the protégé;

(d) Each proposed mentor-protégé relationship must include information on the mentor's ability to provide developmental assistance to the protégé and how that assistance will potentially increase contracting and subcontracting opportunities for the protégé firm;

(e) A description of the type of developmental Program that will be provided by the mentor firm to the

protégé firm, to include a description of the potential subcontract work, and a schedule for providing assistance and criteria for evaluation of the protégés developmental success;

(f) A listing of the types and dollar amounts of subcontracts that may be awarded to the protégé firm;

(g) Program participation term;

(h) Termination procedures;

(i) Plan for accomplishing work should the agreement be terminated; and,

(j) Other terms and conditions, as appropriate.

#### **1019.202-70-13 Developmental assistance.**

The forms of developmental assistance a mentor can provide to a protégé include:

(a) Management guidance relating to financial management, organizational management, overall business management/planning, business development, and technical assistance;

(b) Loans;

(c) Rent-free use of facilities and/or equipment;

(d) Property;

(e) Temporary assignment of personnel to protégé for purpose of training; and,

(f) Any other types of mutually beneficial assistance.

#### **1019.202-70-14 Obligation.**

(a) Mentor or protégé firms, may voluntarily withdraw from the Mentor-Protégé Program. However, such withdrawal will not impact the program mission and contract requirements under the prime contract.

(b) At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé must formally brief the Department of the Treasury team regarding program accomplishments as pertains to the approved agreement. Individual briefings may be conducted, at the request of either party. Treasury will evaluate these reports by considering the following:

(1) Specific actions taken by the mentor, during the evaluation period, to increase the participation of protégé as suppliers to the Federal government and to commercial entities;

(2) Specific actions taken by the mentor, during the evaluation period, to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the protégé has met the developmental objectives in the agreement; and,

(4) To what extent the mentor firm's participation in the Mentor-Protégé

Program resulted in the protégé receiving contract(s) and subcontract(s) from private firms and agencies other than the Department of the Treasury.

(c) Mentor and protégé firms must submit an evaluation to the OSBD at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Mentor-Protégé Program, whichever comes first.

#### **1019.202-70-16 Solicitation provisions and contract clauses.**

(a) Insert the provision at DTAR 1052.219-73, Department of the Treasury Mentor-Protégé Program, in all unrestricted solicitations exceeding \$500,000 (\$1,000,000 for construction) that offer subcontracting possibilities.

(b) Insert the clause at DTAR 1052.219-75, Mentor Requirements and Evaluation, in contracts where the prime contractor is participant in the Treasury Mentor-Protégé Program.

#### **Subpart 1019-7—The Small Business Subcontracting Program**

##### **1019.708 Contract clauses.**

#### **1019.708-70 Solicitation provisions and contract clauses.**

(a) Insert the clause at DTAR 1052.219-70, SF 294 and SF 295 Reporting, in all solicitations and contracts requiring a subcontracting plan.

(b) Insert the provision at DTAR 1052.219-71, Subcontracting Plan, in all solicitations requiring a subcontracting plan.

#### **Subpart 1019.8—Contracting With the Small Business Administration (The 8(a) Program)**

##### **1019.811 Preparing the contracts.**

##### **1019.811-3 Contract clauses.**

(d)(3) Insert the clause at DTAR 1052.219-18, Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation), for paragraph (c) of FAR 52.219-18, Notification of Completion Limited to Eligible 8(a) Concerns, in all solicitations and contracts that exceed \$100,000 and are processed under DTAR 1019.8.

(f) Insert the clause at DTAR 1052.219-72, Section 8(a) Direct Award, in solicitations and contracts that exceed \$100,000 and are processed under DTAR 1019.8 for paragraph (c) of FAR 52.219-11, Special 8(a) Subcontract Conditions; FAR 52.219-12, Special 8(a) Subcontract Conditions; and FAR 52.219-17, Section 8(a) Award.

## **Subchapter E—General Contracting Requirements**

### **PART 1028—BONDS AND INSURANCE**

#### **Subpart 1028.1—Bonds**

Sec.

1028.106 Administration.

1028.106-6 Furnishing information.

#### **Subpart 1028.3—Insurance**

1028.307- Insurance under cost-reimbursement contracts.

1028.307-1 Group insurance plans.

**Authority:** 41 U.S.C. 418b (a) and (b).

#### **Subpart 1028.1—Bonds**

##### **1028.106 Administration.**

##### **1028.106-6 Furnishing information.**

(b) COs must furnish certified copies and determine reasonable and appropriate costs, after consultation with legal counsel.

#### **Subpart 1028.3—Insurance**

**1028.307 Insurance under cost-reimbursement contracts.**

##### **1028.307-1 Group insurance plans.**

Plans must be submitted to the CO, who must obtain the advice of legal counsel.

### **PART 1033—PROTESTS, DISPUTES, AND APPEALS**

#### **Subpart 1033.2—Disputes and Appeals**

Sec.

1033.201 Definitions.

1033.210 Contracting officer's authority.

**Authority:** 41 U.S.C. 418b (a) and (b).

#### **Subpart 1033.2—Disputes and Appeals**

##### **1033.201 Definitions.**

*Agency Board of Contract Appeals* means the General Services Administration Board of Contract Appeals (GSBCA). The GSBCA is the authorized representative of the Secretary of the Treasury in hearing, considering, and determining all appeals of decisions of CO's filed by contractors pursuant to FAR subpart 33.2. Appeals must be governed by the Rules of the GSBCA (48 CFR chapter 61, part 6101).

##### **1033.210 Contracting officer's authority.**

It is Treasury's policy to encourage the use of Alternate Disputes Resolution (ADR) procedures. A decision to use ADR procedures requires review and approval by legal counsel.

**Subchapter H—Clauses and Forms**

**PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**Subpart 1052.2—Texts of Provisions and Clauses**

- Sec.
- 1052.210–70 Contracting Officer's Technical Representative (COTR) Designation and Authority.
- 1052.219–18 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation).
- 1052.219–70 SF 294 and SF 295 Reporting.
- 1052.219–71 Subcontracting Plan.
- 1052.219–72 Section 8(a) Direct Awards.
- 1052.219–73 Department of the Treasury Mentor-Protégé Program.
- 1052.219–74 [Reserved]
- 1053.219–75 Mentor Requirements and Evaluation.

**Authority:** 41 U.S.C. 418b (a) and (b).

**Subpart 1052.2—Texts of Provisions and Clauses**

**1052.201–70 Contracting Officer's Technical Representative (COTR) Designation and Authority.**

Per DTAR 1001.670–3, insert the following clause:

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) DESIGNATION AND AUTHORITY (MAR 2002)

(a) The contracting officer's technical representative is \_\_\_\_\_

[insert name, address and telephone number].

(b) Performance of work under this contract is subject to the technical direction of the COTR identified above, or a representative designated in writing. The term "technical direction" includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the contract specification(s)/work statement. The COTR does not have authority to issue technical direction that:

- (1) Constitutes a change of assignment or additional work outside the contract specification(s)/work statement;
  - (2) Constitutes a change as defined in the clause entitled "Changes";
  - (3) In any manner causes an increase or decrease in the contract price, or the time required for contract performance;
  - (4) Changes any of the terms, conditions, or specification(s)/work statement of the contract;
  - (5) Interferes with the contractor's right to perform under the terms and conditions of the contract; or,
  - (6) Directs, supervises or otherwise controls the actions of the contractor's employees.
- (d) Technical direction may be oral or in writing. The COTR must confirm oral direction in writing within five workdays, with a copy to the contracting officer.
- (e) The contractor must proceed promptly with performance resulting from the

technical direction issued by the COTR. In the opinion of the contractor, if any direction of the COTR or the designated representative falls within the limitations of (c) above, the contractor must immediately notify the contracting officer no later than the beginning of the next Government work day.

(f) Failure of the contractor and the contracting officer to agree that technical direction is within the scope of the contract will be subject to the terms of the clause entitled "Disputes."  
(end of clause)

**1052.219–18 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation).**

In accordance with DTAR 1019.811–3(d)(3), substitute the following for paragraph (c) in FAR 52.219–18:

(c) Any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

**1052.219–70 SF 294 and SF 295 Reporting.**

Per DTAR 1019.708–70(a), insert the following clause:

SF 294 AND SF 295 REPORTING (MAR 2002)

In accordance with the clause entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" in Section I and the contract schedule, SF 294 and SF 295 reports must be submitted to the following personnel:

Addressee	Submit SF 294	Submit SF 295
Contracting Officer (Address shown on front of contract) .....	Original .....	Original.
Small Business Specialist [Insert Bureau name and address] .....	Copy .....	Copy.
Department of the Treasury Office of Small Business Development (MMD) 1500 Pennsylvania Avenue, NW c/o 1310 G St., NW, Suite 400W Washington, DC 20220.	N/A .....	Copy.

(End of clause)

**1052.219–71 Subcontracting Plan.**

As prescribed in DTAR 1019.708–70(b), insert the following provision:

SUBCONTRACTING PLAN (MAR 2002)

As part of its initial proposal, each large business offeror must submit a contracting plan, as prescribed in FAR 52.219–9. Use of the subcontracting plan outlined contains in Section J of this solicitation is optional; however, plans must contain all elements included in the outline.

(End of provision)

**1052.219–72 Section 8(a) Direct Awards.**

As prescribed in DTAR 1019.811–3(f), insert the following clause:

SECTION 8(A) DIRECT AWARDS (MAR 2002)

(a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor

pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of the Treasury. SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: [To be completed by the contracting officer at the time of award]

(b) The contracting officer is responsible for administering the purchase order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The contracting officer shall also coordinate with SBA prior to processing any novation agreement. The contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) To notify the contracting officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner(s) upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control must result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of control; and

(2) To adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.  
(End of clause)

**1052.219–73 Department of the Treasury Mentor-Protégé Program.**

As described in DTAR 1019.202–70, insert the following provision:

DEPARTMENT OF THE TREASURY MENTOR-PROTÉGÉ PROGRAM (JAN 2000)

(a) Large and small businesses are encouraged to participate in the Department of the Treasury Mentor-Protégé Program. Mentor firms provide small business protégé

with developmental assistance to enhance their capabilities and ability to obtain federal contracts.

Mentor firms are large prime contractors or eligible small businesses capable of providing developmental assistance. Protégé firms are small businesses as defined in 13 CFR parts 121, 124, and 126.

Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance to aid protégés. Contractors interested in participating in the Program are encouraged to contact the Department of the Treasury OSBD or the Bureau of the OSBD for further information. (End of provision)

**1052.219-74 [Reserved]**

**1052.219-75 Mentor Requirements and Evaluation.**

As prescribed in DTAR 1019.202-70, insert the following clause:

**MENTOR REQUIREMENTS AND EVALUATION (JAN 2000)**

(a) Mentor and protégé firms shall submit an evaluation to the Department of the Treasury's OSBD at the conclusion of the mutually agreed upon Program period, or the voluntary withdrawal by either party from the Program, whichever occurs first. At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and

protégé will formally brief the Department of the Treasury Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreements.

(b) A mentor or protégé must notify the OSBD and the contracting officer, in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the Program. A mentor firm must notify the OSBD and the contracting officer upon receipt of a protégé's notice of withdrawal from the Program.

(End of Clause)

[FR Doc. 03-16918 Filed 7-2-03; 8:45 am]

**BILLING CODE 4811-15-M**