

(4) For a proposed contract over \$50,000,000 or, for DoD, NASA, and the Coast Guard, over \$75,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 13

[FAC 2005-01; FAR Case 2004-034; Item III]

RIN 9000-AK11

Federal Acquisition Regulation; Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to extend the timeframe to use the test program for commercial items.

DATES: *Effective Date:* April 8, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208-4949. Please cite FAC 2005-01, FAR case 2004-034.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to implement Section 817 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 817 amended section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104-106) by extending until January 1, 2008, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater

than the simplified acquisition threshold, but not exceeding \$5,000,000 (\$10,000,000 for acquisitions as described in 13.500(e)).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This 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. This rule continues current FAR policy. However, the Councils will consider comments from small entities concerning the affected FAR Part 13 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004-034), 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 Part 13

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 13 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

13.500 [Amended]

■ 2. Amend Section 13.500 in paragraph (d) by removing "January 1, 2006" and by adding "January 1, 2008" in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005-01; FAR Case 2004-036; Item IV]

RIN 9000-AK14

Federal Acquisition Regulation; Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program

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 (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) regarding the addition of landscaping and pest control services to the Small Business Competitiveness Demonstration Program. This FAR revision implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) to include landscaping and pest control services.

DATES: *Effective Date:* March 9, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-01, FAR case 2004-036 by any of the following methods:

• Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

• E-mail: farcase.2004-036@gsa.gov. Include FAC 2005-01, FAR case 2004-036 in the subject line of the message.

• Fax: 202-501-4067.

• Mail: General Services Administration, Regulatory Secretariat

(VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–01, FAR case 2004–036, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Kimberly Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–01, FAR case 2004–036.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the FAR to implement Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). The law amends the Small Business Competitiveness Demonstration Program to include landscaping and pest control services. The emerging small business reserve amount for these new services is set at \$25,000.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 there will be additional categories added to the designated industry groups listed in FAR 19.1005. This rule adds landscaping (561730) and pest control (561710) services to the list of National American Industry Classification System (NAICS) codes included as designated industry groups of the Small Business Competitiveness Demonstration Program. The Initial Regulatory Flexibility Act is summarized as follows:

The objective of the interim rule is to further assess the ability of small business concerns to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. The implementation of Section 821 of the Ronald W. Reagan National

Defense Authorization Act for Fiscal Year 2005, Public Law 108–375 will change the FAR as follows: (1) revises the designated industry groups to include Exterminating and Pest Control Services and Landscaping Services in the definition of “Emerging small business reserve amount” at FAR 19.1002(1) and in 19.1005(a); (2) deletes the word “four” before designated industry groups in the FAR.

The interim rule will apply to all small business concerns that compete on Federal acquisitions falling under NAICS codes 561730 and 561710. Based on Governmentwide data retrieved from the Federal Procurement Data System (FPDS) for the specified NAICS codes, approximately 141 small business concerns were awarded contracts of \$25,000 or more on an unrestricted basis in Fiscal Year 2002 for NAICS code 561730. This represents about 88 percent of all contracts awarded with unrestricted competition for that NAICS code. In Fiscal Year 2003, there were 116 contracts awarded to small business concerns on an unrestricted basis, which represents approximately 81 percent of all contracts awarded with unrestricted competition for that NAICS code. FPDS data also show that 25 small business concerns were awarded contracts of \$25,000 or more on an unrestricted basis in Fiscal Year 2002 for NAICS code 561710. This represents about 56 percent of all contracts awarded with unrestricted competition for that NAICS code. In Fiscal Year 2003, there were 17 contracts awarded to small business concerns on an unrestricted basis, which represents approximately 77 percent of all contracts awarded with unrestricted competition for that NAICS code. It is estimated that small business concerns will continue to be successful in winning at least one-half to three-fourths of awards on an unrestricted basis when these designated industry groups are added to the Small Business Competitiveness Demonstration Programs given the history of their success in recent unrestricted competitive government acquisitions falling under NAICS codes 561730 and 561710. Additional data retrieved from FPDS show that the number of small business set-asides for NAICS code 561730 in Fiscal Years 2002 and 2003 combined was approximately 952 and the number of small business set-asides for NAICS code 561710 in Fiscal Years 2002 and 2003 combined was approximately 96.

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 previously set-aside acquisitions for services falling within NAICS codes 561730 and 561710 will now be included in the designated industry groups of the Small Business Competitiveness Demonstration Program. FAR 19.1007(b) states that—

“Solicitations for acquisitions in any of the designated industry groups that have an anticipated dollar value greater than the emerging small business reserve amount must not be considered for small business set-asides under Subpart 19.5. However, agencies may reinstate the use

of small business set-asides as necessary to meet their assigned goals, but only within organizational units that failed to meet the small business participation goal. Acquisitions in the designated industry groups must continue to be considered for placement under the 8(a) Program (see Subpart 19.8), the HUBZone Program (see Subpart 19.13), and the Service-Disabled Veteran-Owned Small Business Procurement Program (see Subpart 19.14).”

Given the large number of awards made under these NAICS codes, it is anticipated that the addition of the 2 NAICS codes to the Small Business Competitiveness Demonstration Program will promote an increased number of opportunities for small business concerns to develop teaming arrangements and joint ventures.

The purpose of the Competitiveness Demonstration Program is to assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in FAR 19.1005(a) and will include the addition of landscaping and pest control services to the designated industry groups. The interim rule imposes no reporting, recordkeeping, or other compliance requirements. The interim rule does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives that will accomplish the objectives of this interim rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 19 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–01, FAR case 2004–036), 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 because the interim rule includes FAR text revisions

required to implement the recently enacted Public Law 108-375, Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (October 28, 2004), Section 821, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

19.502-2 [Amended]

■ 2. Amend section 19.502-2 in paragraph (d) by removing the word “four”.

■ 3. In section 19.1002 revise paragraph (1) of the definition “Emerging small business reserve amount” to read as follows:

19.1002 Definitions.

* * * * *

Emerging small business reserve amount * * *

(1) \$25,000 for construction, refuse systems and related services, non-nuclear ship repair, landscaping and pest control services; and

* * * * *

■ 4. Amend section 19.1005 in paragraph (a) by adding an Item 5 to the “NAICS Description” to read as follows:

19.1005 Applicability.

(a) * * *

NAICS CODE	NAICS DESCRIPTION
561710	Exterminating and Pest Control Services
561730	Landscaping Services

19.1001, 19.1003, 19.1007, and 19.1008 [Amended]

■ 5. In addition to the amendments set forth above, remove the word “four” in

the following places:(a) Section 19.1001(a);(b) Section 19.1003(a) and (c);(c) Section 19.1007(b) and (c); and(d) Section 19.1008(a).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.212-3 by revising the date of the clause to read “(MAR 2005)” and by removing from paragraphs (c)(8)(i) and (c)(8)(ii) the word “four” wherever it appears.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 2005-01; FAR Case 2003-021; Item V]

RIN 9000-AJ95

Federal Acquisition Regulation; Nonavailable Articles-Policy

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the intent of the list of items determined to be nonavailable for purposes of the Buy American Act, and to emphasize the need to conduct market research, appropriate to the circumstances, for potential domestic sources.

DATES: *Effective Date:* April 8, 2005.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2005-01, FAR case 2003-021.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 29632, May 24, 2004. The rule proposed to amend FAR Subpart 25.1 in order to clarify that being on the list does not mean that an item is

completely nonavailable from U.S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the proposed rule also emphasized the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list. The Councils received no comments on the proposed rule and have agreed to convert the proposed rule to a final rule without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule 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 is a clarification of existing policies, except for requiring a more proactive approach to market research by the Government.

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 Part 25

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 25 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 25.103 by revising paragraph (b) to read as follows:

25.103 Exceptions.

* * * * *

(b) *Nonavailability.* The Buy American Act does not apply with respect to articles, materials, or supplies