

contracts and orders if the clause at 52.204-11 is not incorporated. This clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contains the original clause FAR 52.204-11 (March 2009).

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 52.204-11 by—
  - a. Removing from the clause heading “(MAR 2009)” and adding “(JUL 2010)” in its place;
  - b. Revising paragraphs (a) and (c);
  - c. Revising paragraph (d)(7) introductory text;
  - d. Removing from paragraph (d)(7)(i) the word “contractor’s” and adding the word “Contractor’s” in its place;
  - e. Revising paragraphs (d)(7)(ii) and (d)(10) introductory text; and
  - f. Adding paragraph (d)(10)(xii).

The added and revised text reads as follows:

### 52.204-11 American Recovery and Reinvestment Act—Reporting Requirements.

\* \* \* \* \*

(a) *Definitions.* For definitions related to this clause (e.g., contract, first-tier subcontract, total compensation etc.) see the Frequently Asked Questions (FAQs) available at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors). These FAQs are also linked under <http://www.FederalReporting.gov>.

\* \* \* \* \*

(c) Reports from the Contractor for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be updated from time-to-time. The first report is due no later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. For information on when the Contractor shall submit its final report, see [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).

(d) \* \* \*

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor’s and first-tier subcontractors’ workforce for all first-tier subcontracts valued at \$25,000 or more. At a minimum, the Contractor shall provide—

\* \* \* \* \*

(ii) An estimate of the number of jobs created and jobs retained by the prime Contractor and all first-tier subcontracts valued at \$25,000 or more, in the United

States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).

\* \* \* \* \*

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is valued at \$25,000 or more and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in paragraphs (d)(1)(i), (ix), (x), (xi), and (xii) of this section to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Contractor shall provide detailed information on these first-tier subcontracts as follows:

\* \* \* \* \*

(xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the subcontractor’s workforce. At a minimum, the subcontractor shall provide—

(A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the subcontractor’s existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(B) An estimate of the number of jobs created and jobs retained by the subcontractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).

\* \* \* \* \*

### 52.212-5 [Amended]

- 4. Amend section 52.212-5 by removing from the clause heading “(June 2010)” and adding “(JUL 2010)” in its place; and removing from paragraph (b)(4) “MAR 2009” and adding “(JUL 2010)” in its place.

[FR Doc. 2010-15908 Filed 7-1-10; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 19

[FAC 2005-43; FAR Case 2008-023; Item IV; Docket 2009-0017, Sequence 1]

RIN 9000-AL29

### Federal Acquisition Regulation; FAR Case 2008-023, Clarification of Criteria for Sole Source Awards to Service-Disabled Veteran-Owned Small Business Concerns

**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) are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to clarify the criteria that need to be met in order to conduct a sole source Service-disabled Veteran-owned Small Business (SDVOSB) concern acquisition.

**DATES:** *Effective Date:* August 2, 2010

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-43, FAR Case 2008-023.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Councils published a proposed rule in the **Federal Register** at 74 FR 23373 on May 19, 2009, to revise the language in FAR 19.1406(a)(1) to clarify the criteria that need to be met in order to conduct a sole source SDVOSB concern acquisition. The final rule contains language that more closely mirrors the Veterans Benefit Act of 2003 (15 U.S.C. 657f). The final rule revises the language in FAR 19.1306(a)(1), which deals with sole source awards to Historically Underutilized Business Zone (HUBZone) small business concerns based on 15 U.S.C. 657a(b), to match the language in FAR 19.1406(a)(1) to alleviate confusion on the appropriate use of the criteria needed to conduct a sole source SDVOSB concern acquisition.

The public comment period for the FAR proposed rule closed July 20, 2009. Eight respondents submitted comments to the proposed rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided below. Three respondents concurred with the proposed changes to clarify the criteria that needed to be met in order to conduct a sole source SDVOSB concern acquisition.

1. *Comment: Increase knowledge of the marketplace and SDVOSB advocacy.* One respondent expressed concern that the contracting officer does not have sufficient knowledge of the marketplace to make a sole-source determination without the advice of the U.S. Department of Veterans Affairs, the Small Business Administration (SBA), or other entities that advocate for the veteran community. The respondent further added that the regulatory language needs to mandate that the contracting officer exercise a higher level of advocacy for service-disabled veteran-owned firms to ensure these firms receive greater representation in the procurement process.

*Response:* The purpose of this regulatory change is to clarify the circumstances under which a contracting officer may award a sole-source contract to a small business concern owned and controlled by a service-disabled veteran. This case does not address market research or advocacy; therefore the respondent's comments are considered outside the scope of this case.

2. *Comment: Correction to FAR 19.1306(a)(2).* One respondent requested an additional review be conducted regarding FAR 19.1306(a)(2), because paragraph (c) does not exist.

*Response:* The reference to paragraph (c) is deleted.

3. *Comment: Revise the language in FAR 19.1306(a) and 19.1406(a).* Two respondents recommended revising paragraph (a) of FAR 19.1406 Sole Source Awards to Service-disabled Veterans-owned Small Business concerns to match the language in paragraph (a) of FAR 19.1306 by adding the language: "(a) A participating agency contracting office may award contracts to a service-disabled Veteran-owned small business concern on a sole source basis without considering small business set-asides provided-".

*Response:* FAR 19.1406(a) has been revised to be consistent with FAR 19.1306(a).

4. *Comment: Revise the SDVOSB language to mirror the 8(a) language.* One respondent recommended that the language in the FAR for SDVOSB sole

source criteria mirror the language of the 8(a) criteria.

*Response:* The SDVOSB program and the 8(a) Business Development Program were established under two separate statutes with different sole-source award requirements. The statute for the SDVOSB program does not require the FAR language to be similar to the FAR language for the 8(a) Business Development Program.

5. *Comment: Raise the prescribed \$3 million threshold to \$3.5 million.* One respondent recommended that the dollar limit for the sole source awards to a Service-disabled Veteran-owned small business be raised to \$3.5 million from the prescribed \$3 million to be consistent with the dollar limits for non-manufacturing 8(a) awards.

*Response:* Threshold changes are based on statute. Federal Acquisition Circular 2005-013, FAR Case 2004-033, published in the **Federal Register** at 71 FR 57363 on September 28, 2006, was based on a statutory requirement, raising thresholds in the FAR due to inflation. The escalation calculation for the inflationary threshold for sole source awards to Service-disabled Veteran-owned small businesses was not eligible for an inflationary increase (see <http://acquisition.gov/far/facsframe.html>). However, FAR Case 2008-024 is the case handling the next round of inflationary increases, and when that case is published as a final rule, the threshold may be raised; the Councils note that the inflation calculation is different for SDVOSB than for 8(a) and HUBZone because these statutes were enacted at different times.

This rule is a significant regulatory action and, therefore, was 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 this rule clarifies the intent of the existing language and is not a change in policy. The Councils did not receive any comments on the Regulatory Flexibility Act or a perceived burden on small business.

## 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. chapter 35, *et seq.*

### List of Subjects in 48 CFR Part 19

Government procurement.

Dated: June 25, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

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

### PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 19 continues 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 19.1306 by revising the introductory text of paragraph (a), paragraph (a)(1), the introductory text of paragraph (a)(2), and paragraph (a)(3) to read as follows:

#### 19.1306 HUBZone sole source awards.

(a) A contracting officer may award contracts to HUBZone small business concerns on a sole source basis (see 19.501(c) and 6.302-5(b)(5)) before considering small business set-asides (see subpart 19.5), provided—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns;

(2) The anticipated price of the contract, including options, will not exceed—

\* \* \* \* \*

(3) The requirement is not currently being performed by an 8(a) participant under the provisions of subpart 19.8 or has been accepted as a requirement by SBA under subpart 19.8.

\* \* \* \* \*

■ 3. Amend section 19.1406 by revising the introductory text of paragraph (a), paragraph (a)(1), and the introductory text of paragraph (a)(2); redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, and adding a new paragraph (a)(3) to read as follows:

#### 19.1406 Sole source awards to service-disabled veteran-owned small business concerns.

(a) A contracting officer may award contracts to service-disabled veteran-owned small business concerns on a sole source basis (see 19.501(d) and

6.302–5(b)(6)), before considering small business set-asides (see subpart 19.5) provided none of the exclusions of 19.1404 apply and—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more service-disabled veteran-owned small business concerns;

(2) The anticipated award price of the contract, including options, will not exceed—

\* \* \* \* \*

(3) The requirement is not currently being performed by an 8(a) participant under the provisions of subpart 19.8 or has been accepted as a requirement by SBA under subpart 19.8;

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 22, 25, and 52**

[FAC 2005–43; FAR Case 2009–040; Item V; Docket 2010–0092, Sequence 1]

RIN 9000–AL57

**Federal Acquisition Regulation; FAR Case 2009–040, Trade Agreements Thresholds**

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 (the Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

**DATES:** *Effective Date:* July 2, 2010.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before August 31, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–43, FAR Case 2009–040, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–040” under the heading “Enter Keyword or ID” and selecting “Search”. Select the link “Submit a Comment” that corresponds with “FAR Case 2009–040”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009–040” on your attached document.

- *Fax:* 202–501–4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005–43, FAR case 2009–040, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2005–43, FAR Case 2009–040. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Every two years, the trade agreements thresholds are adjusted according to a pre-determined formula under the agreements. On December 29, 2009 (74 FR 68907), the United States Trade Representative established new procurement thresholds. These thresholds became effective on January 1, 2010. The United States Trade Representative has specified the following new thresholds:

| Trade agreement  | Supply contract (equal to or exceeding) | Service contract (equal to or exceeding) | Construction contract (equal to or exceeding) |
|--|---|--|---|
| WTO GPA .....  | \$203,000                               | \$203,000                                | \$7,804,000                                   |
| FTAs:  |   |  |   |
| Australia FTA .....  | 70,079                                  | 70,079                                   | 7,804,000                                     |
| Bahrain FTA .....  | 203,000                                 | 203,000                                  | 9,110,318                                     |
| CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) ..... | 70,079                                  | 70,079                                   | 7,804,000                                     |
| Chile FTA .....  | 70,079                                  | 70,079                                   | 7,804,000                                     |
| Morocco FTA .....  | 203,000                                 | 203,000                                  | 7,804,000                                     |
| NAFTA:   |   |  |   |
| —Canada .....  | 25,000                                  | 70,079                                   | 9,110,318                                     |
| —Mexico .....  | 70,079                                  | 70,079                                   | 9,110,318                                     |
| Oman FTA .....   | 203,000                                 | 203,000                                  | 9,110,318                                     |
| Peru FTA .....   | 203,000                                 | 203,000                                  | 7,804,000                                     |
| Singapore FTA .....  | 70,079                                  | 70,079                                   | 7,804,000                                     |
| Israeli Trade Act .....  | 50,000                                  | .....                                    | .....   |

**B. Executive Order 12866**

This is a significant regulatory action and, therefore, was 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.

**C. Regulatory Flexibility Act**

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the