

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran; and

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (e.g., 52.212–3(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

* * * * *

■ 10. Revise section 52.225–25 to read as follows:

52.225–25 Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran—Representation and Certification.

As prescribed at 25.1103(e), insert the following provision:

Prohibition on Contracting With Entities Engaging in Sanctioned Activities Relating to Iran—Representation and Certification (NOV 2011)

(a) *Definitions.* As used in this provision—
Person—

(1) Means—

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

Sensitive technology—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(b) The offeror shall email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with 25.703–4, by submission of its offer, the offeror—

(1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran; and

(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies.

(d) *Exception for trade agreements.* The representation requirement of paragraph (c)(1) and the certification requirement of paragraph (c)(2) of this provision do not apply if—

(1) This solicitation includes a trade agreements notice or certification (e.g., 52.225–4, 52.225–6, 52.225–12, 52.225–24, or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

[FR Doc. 2011–27784 Filed 11–1–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 16, 19, 38, and 52

[FAC 2005–54; FAR Case 2011–024; Item VI; Docket 2011–0024, Sequence 01]

RIN 9000–AM12

Federal Acquisition Regulation; Set-Asides for Small Business

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

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 1331 of the Small Business Jobs Act of 2010 (Jobs Act). Section 1331 addresses set-asides of task- and delivery-orders under multiple-award contracts, partial set-asides under multiple-award contracts, and the reserving of one or more multiple-award contracts that are awarded using full and open competition. Within this same context,

section 1331 also addresses the Federal Supply Schedules Program managed by GSA. DoD, GSA, and NASA are coordinating with the Small Business Administration (SBA) on the development of an SBA proposed rule that will provide greater detail regarding implementation of section 1331 authorities.

DATES: *Effective Date:* November 2, 2011.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before January 3, 2012 to be considered in the formation of a final rule.

Applicability Date: Contracting officers are encouraged to modify, on a bilateral basis, existing multiple-award contracts in accordance with FAR 1.108(d)(3), if the remaining period of performance extends at least six months after the effective date, and the amount of work or number of orders expected under the remaining performance period is substantial.

ADDRESSES: Submit comments identified by FAC 2005–54, FAR Case 2011–024, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2011–024” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2011–024.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2011–024” on your attached document.

- *Fax:* (202) 501–4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–54, FAR Case 2011–024, 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: Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–54, FAR Case 2011–024.

SUPPLEMENTARY INFORMATION:

I. Background

Over the past 15 years, Federal agencies have increasingly used multiple award contracts—including the Federal Supply Schedules managed by GSA, governmentwide acquisition contracts, multi-agency contracts, and agency-specific indefinite-delivery, indefinite-quantity (IDIQ) contracts—to acquire a wide range of products and services. This trend has created challenges for agencies seeking to provide maximum opportunity for small businesses. Although set-asides are one of the most effective tools agencies have at their disposal to help small businesses participate in Government contracting opportunities, the FAR is silent on how to apply set-asides at the task-or-delivery order level.

In September 2010, the Interagency Task Force on Small Business Contracting, created by the President in April of that year, issued a report recommending that the rules on set-asides, including for multiple-award contracts, be clarified, and that legislation be developed where it is determined that statutory changes are warranted. The Task Force noted that set-asides accounted for approximately half of all small business contract awards in FY 2009, yet “there has been no attempt to create a comprehensive policy for orders placed under either general task- and delivery-order contracts or schedule contracts that rationalizes and appropriately balances the need for efficiency with the need to maximize opportunities for small businesses.” For a copy of the report, go to http://www.sba.gov/sites/default/files/contracting_task_force_report_0.pdf.

The same month as the Task Force report was issued, the President signed the Jobs Act (Pub. L. 111–240) into law to protect the interests of small businesses and expand their opportunities in the Federal marketplace. Section 1331 of the Jobs Act amends section 15 of the Small Business Act (Pub. L. 85–536) to add a new subsection (r) stating, in pertinent part, that:

The Administrator, Office of Federal Procurement Policy (OFPP) and the Administrator, U.S. Small Business Administration (SBA), in consultation with the Administrator of the General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

(1) Set aside part or parts of a multiple-award contract for small business concerns, including the subcategories of small business

concerns identified in subsection (g)(2) of the Small Business Act;

(2) Notwithstanding the fair opportunity requirements under section 2304c(b) of Title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(b)) (subsequently recodified as 41 U.S.C. 4106), set aside orders placed against multiple-award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2) of the Small Business Act; and

(3) Reserve one or more contract awards for small business concerns under full and open multiple-award procurements, including the subcategories of small business concerns identified in subsection (g)(2) of the Small Business Act.

SBA and OFPP, which are vested under section 1331 with the authority to issue regulations, in consultation with the Administrator of GSA, have requested that DoD, GSA, and NASA publish this interim rule in order to provide agencies with guidance that they can use in taking advantage of this important tool, while SBA completes the drafting and coordination of a proposed rule that will set forth more specific guidance. This interim rule amends—

- FAR subpart 8.4 to make clear that order set-asides may be used in connection with the placement of orders and blanket purchase agreements under Federal Supply Schedules;

- FAR subpart 12.2 to acknowledge that discretionary set-asides may be used if placing an order under a multiple-award contract;

- FAR subpart 16.5 to acknowledge that set-asides may be used in connection with the placement of orders under multiple-award contracts, notwithstanding the requirement to provide each contract holder a fair opportunity to be considered;

- FAR part 19 to add a new section authorizing agencies to (1) use set-asides under multiple-award contracts—including set-asides for small businesses participating in the small business programs identified in FAR 19.000(a)(3); and (2) reserve one or more contract awards under multiple-award contracts for small businesses, including any of the socio-economic groups; and

- FAR subpart 38.1 to add a reference to FAR 8.405–5 to make clear that order set-asides may be used in connection with the placement of orders and blanket purchase agreements under Federal Supply Schedules.

This interim rule also amends existing solicitation provisions and contract

clauses, including FAR 52.219–6 to provide notice of total set-asides and partial set-asides under multiple-award contracts, and revises existing contract clauses to address limitations on subcontracting for small businesses under multiple award contracts.

DoD, GSA, and NASA expect agencies to take advantage of set-asides under multiple-award contracts by: (1) Identifying existing or prospective multiple-award contracts with small business contract holders where order set-asides may be appropriate, and (2) maximizing opportunities for small business by utilizing order set-asides under the Federal Supply Schedule Program.

II. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The change 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.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The Administrator of the Office of Management and Budget's Office of Federal Procurement Policy requested that DoD, GSA, and NASA amend the FAR to provide preliminary implementation of section 1331 of the Small Business Jobs Act of 2010 (Jobs Act).

DoD, GSA, and NASA are amending the FAR to implement the authority to (1) set aside part or parts of a multiple-award contract for small business concerns; (2) set aside orders placed against multiple-award contracts, including Federal Supply Schedules, for small business concerns; and (3) reserve one or more contract awards under full and open multiple-award procurements, for small business concerns.

The objective of this rule is to provide an additional tool for agencies to increase opportunities for small business to compete in the Federal marketplace. The statutory authority for this action is Small Business

Jobs Act of 2010, Pub. L. 111–240, 15 U.S.C. 644(r).

This rule may have a significant positive economic impact on any small business entity that wishes to participate in the Federal procurement arena. Analysis of the Central Contractor Registration database indicates there are over 351,203 small business registrants that can potentially benefit from the implementation of this rule.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–54, FAR Case 2011–024) in correspondence.

IV. Paperwork Reduction Act

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. 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 section 1331 of the Jobs Act calls for the issuance, within one year of the law’s enactment (September 27, 2010), of “a regulation, to establish guidance under which Federal agencies may, at their discretion—” set aside task-and-delivery orders under multiple-award contracts, use partial set-asides under multiple-award contracts, and reserve one or more contracts under procurements awarded using full and open competition.

Despite the progress agencies have made over the past two years in increasing the amount of contracting

dollars awarded to small businesses, the set-aside authority for multiple-award contracts conveyed by this interim rule may serve as the linchpin to closing the remaining shortfall agencies are experiencing in meeting their small business contracting goals. As such, valuable opportunities to help small businesses through set-asides and reserves under multiple-award contracts will be lost while the rulemaking process moves forward. Issuing an interim rule that is effective upon publication, prior to the receipt of public comment, will allow agencies to immediately begin taking advantage of set-asides under multiple-award contracts, as envisioned by the Jobs Act, to increase awards to small businesses. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA 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 8, 12, 16, 19, 38, and 52

Government procurement.

Dated: October 21, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 12, 16, 19, 38, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 8, 12, 16, 19, 38, and 52 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).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 8.405–5 by revising paragraph (a); and redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and adding a new paragraph (b) to read as follows:

8.405–5 Small business.

(a) Although the preference programs of part 19 are not mandatory in this subpart, in accordance with section 1331 of Public Law 111–240 (15 U.S.C. 644(r))—

(1) Ordering activity contracting officers may, at their discretion—

(i) Set aside orders for any of the small business concerns identified in 19.000(a)(3); and

(ii) Set aside BPAs for any of the small business concerns identified in 19.000(a)(3).

(2) When setting aside orders and BPAs—

(i) Follow the ordering procedures for Federal Supply Schedules at 8.405–1, 8.405–2, and 8.405–3; and

(ii) The specific small business program eligibility requirements identified in part 19 apply.

(b) Orders placed against schedule contracts may be credited toward the ordering activity’s small business goals. For purposes of reporting an order placed with a small business schedule contractor, an ordering agency may only take credit if the awardee meets a size standard that corresponds to the work performed. Ordering activities should rely on the small business representations made by schedule contractors at the contract level.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 12.207 by revising paragraph (b)(1)(i)(C) to read as follows:

12.207 Contract type.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) The fair opportunity procedures in 16.505 (including discretionary small business set-asides under 16.505(b)(2)(i)(F)), if placing an order under a multiple-award delivery-order contract; and

* * * * *

PART 16—TYPES OF CONTRACTS

■ 4. Amend section 16.505 by—

■ a. Revising the introductory text of paragraph (b);

■ b. Adding paragraph (b)(2)(i)(F);

■ c. Revising the introductory text of paragraph (b)(2)(ii); and

■ d. Revising paragraph (b)(2)(ii)(D)(5).

The revised and added text reads as follows:

16.505 Ordering.

* * * * *

(b) Orders under multiple-award contracts—

* * * * *

(2) * * *

(i) * * *

(F) In accordance with section 1331 of Public Law 111–240 (15 U.S.C. 644(r)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in 19.000(a)(3). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in part 19 apply.

(ii) The justification for an exception to fair opportunity shall be in writing as

specified in paragraphs (b)(2)(ii)(A) or (B) of this section. No justification is needed for the exception described in paragraph (b)(2)(i)(F) of this section.

* * * * *

(D) * * *

(5) The posting requirement of this section does not apply—

(i) When disclosure would compromise the national security (e.g., would result in disclosure of classified information) or create other security risks; or

(ii) To a small business set-aside under paragraph (b)(2)(i)(F).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.502–4 and 19.502–5 [Redesignated as 19.502–5 and 19.502–6]

■ 5a. Redesignate sections 19.502–4 and 19.502–5 as sections 19.502–5 and 19.502–6, respectively.

■ 5b. Add a new section 19.502–4 to read as follows:

19.502–4 Multiple-award contracts and small business set-asides.

In accordance with section 1331 of Public Law 111–240 (15 U.S.C. 644(r)) contracting officers may, at their discretion—

(a) When conducting multiple-award procurements using full and open competition, reserve one or more contract awards for any of the small business concerns identified in 19.000(a)(3). The specific program eligibility requirements identified in this part apply;

(b) Set aside part or parts of a multiple-award contract for any of the small business concerns identified in 19.000(a)(3). The specific program eligibility requirements identified in this part apply; or

(c) Set aside orders placed under multiple-award contracts for any of the small business concerns identified in 19.000(a)(3). For orders placed under the Federal Supply Schedules Program see 8.405–5. For all other multiple-award contracts see 16.505.

* * * * *

■ 6. Amend section 19.508 by revising paragraphs (c), (d), and (e); and adding paragraph (f) to read as follows:

19.508 Solicitation provisions and contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 52.219–6, Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides or reserves. This includes multiple-award

contracts when orders may be set aside for any of the small business concerns identified in 19.000(a)(3), as described in 8.405–5 and 16.505(b)(2)(i)(F). The clause at 52.219–6 with its Alternate I will be used 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)). Use the clause at 52.219–6 with its Alternate II when including FPI in the competition in accordance with 19.504.

(d) The contracting officer shall insert the clause at 52.219–7, Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides. This includes part or parts of multiple-award contracts, including those described in 38.101. The clause at 52.219–7 with its Alternate I will be used 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)). Use the clause at 52.219–7 with its Alternate II when including FPI in the competition in accordance with 19.504.

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside or reserved for small business and the contract amount is expected to exceed \$150,000. This includes multiple-award contracts when orders may be set aside for small business concerns, as described in 8.405–5 and 16.505(b)(2)(i)(F).

(f) The contracting officer shall insert the clause at 52.219–13, Notice of Set-Aside of Orders, in solicitations and contracts to notify offerors if an order or orders are to be set aside for any of the small business concerns identified in 19.000(a)(3).

■ 7. Amend section 19.811–3 by revising paragraph (e) to read as follows:

19.811–3 Contract clauses.

* * * * *

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in any solicitation and contract resulting from this subpart. This includes multiple-award contracts when orders may be set aside for 8(a) concerns as described in 8.405–5 and 16.505(b)(2)(i)(F).

■ 8. Amend section 19.1304 by revising paragraphs (b) and (c) to read as follows:

19.1304 Exclusions.

* * * * *

(b) Orders under indefinite-delivery contracts (see subpart 16.5). (But see 16.505(b)(2)(i)(F) for discretionary set-asides of orders);

(c) Orders against Federal Supply Schedules (see subpart 8.4). (But see 8.405–5 for discretionary set-asides of orders);

* * * * *

19.1308 [Amended]

■ 9. Amend section 19.1308 by removing from the first sentence of paragraph (b) “of Total Hubzone” and adding “of Hubzone” in its place.

■ 10. Amend section 19.1309 by revising the introductory text of paragraph (a) to read as follows:

19.1309 Contract clauses.

(a) The contracting officer shall insert the clause 52.219–3, Notice of HUBZone Set-Aside or Sole Source Award, in solicitations and contracts for acquisitions that are set aside, or reserved for, or awarded on a sole source basis to, HUBZone small business concerns under 19.1305 or 19.1306. This includes multiple-award contracts when orders may be set aside for HUBZone small business concerns as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

■ 11. Amend section 19.1404 by revising paragraphs (b) and (c) to read as follows:

19.1404 Exclusions.

* * * * *

(b) Orders under indefinite-delivery contracts (see subpart 16.5). (But see 16.505(b)(2)(i)(F) for discretionary set-asides of orders);

(c) Orders against Federal Supply Schedules (see subpart 8.4). (But see 8.405–5 for discretionary set-asides of orders); or

* * * * *

■ 12. Revise section 19.1407 to read as follows:

19.1407 Contract clauses.

The contracting officer shall insert the clause 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside, in solicitations and contracts for acquisitions that are set aside or reserved for, or awarded on a sole source basis to, service-disabled veteran-owned small business concerns under 19.1405 and 19.1406. This includes multiple-award contracts when orders may be set aside for service-disabled veteran-owned small business concerns as described in 8.405–5 and 16.505(b)(2)(i)(F).

■ 13. Amend section 19.1504 by revising paragraphs (c) and (d) to read as follows:

19.1504 Exclusions.

* * * * *

(c) Orders under indefinite-delivery contracts (see subpart 16.5). (But see 16.505(b)(2)(i)(F) for discretionary set-asides of orders); or (d) Orders against Federal Supply Schedules (see subpart 8.4). (But see 8.405–5 for discretionary set-asides of orders.)

■ 14. Amend section 19.1506 by revising paragraphs (a) and (b) to read as follows:

19.1506 Contract clauses.

(a) The contracting officer shall insert the clause 52.219–29, Notice of Set-Aside for Economically Disadvantaged Women-owned Small Business Concerns, in solicitations and contracts for acquisitions that are set aside or reserved for economically disadvantaged women-owned small business (EDWOSB) concerns under 19.1505(b). This includes multiple-award contracts when orders may be set aside for EDWOSB concerns as described in 8.405–5 and 16.505(b)(2)(i)(F).

(b) The contracting officer shall insert the clause 52.219–30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, in solicitations and contracts for acquisitions that are set aside or reserved for women-owned small business (WOSB) concerns under 19.1505(c). This includes multiple-award contracts when orders may be set aside for WOSB concerns eligible under the WOSB program as described in 8.405–5 and 16.505(b)(2)(i)(F).

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

38.101 [Amended]

■ 15. Amend section 38.101 by removing from paragraph (e) “(except see 8.404).” and adding “(except see 8.404 and 8.405–5).” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. Amend section 52.212–5 by—
 ■ a. Revising the date of the clause and paragraphs (b)(8) and (b)(11);
 ■ b. Redesignating paragraphs (b)(15) through (b)(49) as paragraphs (b)(16) through (b)(50), respectively;
 ■ c. Adding a new paragraph (b)(15); and
 ■ d. Revising newly redesignated paragraphs (b)(16), (b)(21), (b)(23), and (b)(24).

The revised and added text reads 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 (NOV 2011)

* * * * *

(b) * * *
 __ (8) 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award (NOV 2011) (15 U.S.C. 657a).

* * * * *
 __ (11)(i) 52.219–6, Notice of Total Small Business Set-Aside (NOV 2011) (15 U.S.C. 644).

__ (ii) Alternate I (NOV 2011).
 __ (iii) Alternate II (NOV 2011).

* * * * *
 __ (15) 52.219–13, Notice of Set-Aside of Orders (NOV 2011) (15 U.S.C. 644(r)).

__ (16) 52.219–14, Limitations on Subcontracting (NOV 2011) (15 U.S.C. 637(a)(14)).

* * * * *
 __ (21) 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011) (15 U.S.C. 657f).

* * * * *
 __ (23) 52.219–29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns (NOV 2011).

__ (24) 52.219–30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (NOV 2011).

* * * * *
 ■ 17. Amend section 52.219–3 by—
 ■ a. Revising the section heading, the clause heading, and the date of the clause;
 ■ b. Redesignating paragraphs (b) through (f) as paragraphs (c) through (g), respectively;
 ■ c. Adding a new paragraph (b);
 ■ d. Removing from the newly redesignated paragraph (e) “in paragraph (c) of” and adding “in paragraph (d) of” in its place;
 ■ e. Removing from the newly redesignated paragraph (f) “Paragraphs (e)(1) and (e)(2) of” and adding “Paragraphs (f)(1) and (f)(2) of” in its place; and
 ■ f. In Alternate I, revising the date and introductory text; and redesignating paragraphs (c)(3) and (c)(4) as paragraphs (d)(3) and (d)(4), respectively.

The revised and added text reads as follows:

52.219–3 Notice of HUBZone Set-Aside or Sole Source Award.

* * * * *

Notice of HUBZone Set-Aside or Sole Source Award (NOV 2011)

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside or reserved for, or awarded on a sole source basis to, HUBZone small business concerns;
- (2) Part or parts of a multiple-award contract that have been set aside for HUBZone small business concerns; and
- (3) Orders set-aside for HUBZone small business concerns under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

Alternate I (NOV 2011). As prescribed in 19.1309(a)(1), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

* * * * *

- 18. Amend section 52.219–6 by—
- a. Revising the date of the clause;
- b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
- c. Adding a new paragraph (b);
- d. In Alternate I, revising the date; and removing from the end of the paragraph “delete paragraph (c).” and adding “delete paragraph (d).” in its place; and
- e. In Alternate II, revising the date and introductory text; and redesignating paragraph (b) as paragraph (c), respectively.

The revised and added text reads as follows:

52.219–6 Notice of Total Small Business Set-Aside.

* * * * *

Notice of Total Small Business Set-Aside (NOV 2011)

* * * * *

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been totally set aside or reserved for small business concerns; and
- (2) Orders set aside for small business concerns under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

Alternate I (NOV 2011). * * *
Alternate II (NOV 2011). As prescribed in 19.508(c), substitute the following paragraph (c) for paragraph (c) of the basic clause:

* * * * *

■ 19. Add section 52.219–13 to read as follows:

52.219–13 Notice of Set-Aside of Orders.

As prescribed in 19.508(f), insert the following clause:

Notice of Set-Aside of Orders (Nov 2011)

The Contracting Officer will give notice of the order or orders, if any, to be set aside for small business concerns identified in 19.000(a)(3) and the applicable small

business program. This notice, and its restrictions, will apply only to the specific orders that have been set aside for any of the small business concerns identified in 19.000(a)(3).
(End of clause)

- 20. Amend section 52.219–14 by—
- a. Revising the date of the clause;
- b. Redesignating paragraph (b) as paragraph (c); and
- c. Adding a new paragraph (b) to read as follows:

52.219–14 Limitations on Subcontracting.
* * * * *

Limitations on Subcontracting (Nov 2011)
* * * * *

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside or reserved for small business concerns or 8(a) concerns;
- (2) Part or parts of a multiple-award contract that have been set aside for small business concerns or 8(a) concerns; and
- (3) Orders set aside for small business or 8(a) concerns under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

- 21. Amend section 52.219–27 by—
- a. Revising the section heading, the clause heading, and the date of the clause;
- b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively; and
- c. Adding a new paragraph (b).
The revised and added text reads as follows:

52.219–27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside.
* * * * *

Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011)
* * * * *

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside or reserved for service-disabled veteran-owned small business concerns;
- (2) Part or parts of a multiple-award contract that have been set aside for service-disabled veteran-owned small business concerns; and
- (3) Orders set aside for service-disabled veteran-owned small business concerns under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

- 22. Amend section 52.219–29 by—
- a. Revising the section heading, the clause heading, and the date of the clause;
- b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;

- c. Adding a new paragraph (b); and
- d. Removing from the newly redesignated paragraph (e)(4) “paragraph (c) above” and adding “paragraph (d) above” in its place.

The revised and added text reads as follows:

52.219–29 Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns.
* * * * *

Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns (Nov 2011)
* * * * *

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside or reserved for EDWOSB concerns;
- (2) Part or parts of a multiple-award contract that have been set aside for EDWOSB concerns; and
- (3) Orders set aside for EDWOSB concerns under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

- 23. Amend section 52.219–30 by—
- a. Revising the section heading, the clause heading, and the date of the clause;
- b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;
- c. Adding a new paragraph (b); and
- d. Removing from the newly redesignated paragraph (e)(4) “paragraph (c) above” and adding “paragraph (d) above” in its place.
The revised and added text reads as follows:

52.219–30 Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.
* * * * *

Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Nov 2011)
* * * * *

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside or reserved for WOSB concerns eligible under the WOSB Program;
- (2) Part or parts of a multiple-award contract that have been set aside for WOSB concerns eligible under the WOSB Program; and
- (3) Orders set aside for WOSB concerns eligible under the WOSB Program, under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F).

* * * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 2005–54; FAR Case 2009–041; Item VII; Docket 2010–0105, Sequence 1]

RIN 9000–AL65

Federal Acquisition Regulation; Sudan Waiver Process

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to revise the prohibition on contracting with entities that conduct restricted business operations in Sudan. This rule adds specific criteria including foreign policy aspects that an agency must address when applying to the President or his appointed designee for a waiver of the prohibition on awarding a contract to a contractor that conducts restricted business operations in Sudan. The rule also describes the consultation process that will be used by the Office of Federal Procurement Policy (OFPP) in support of the waiver request review.

DATES: *Effective Date:* December 2, 2011.

FOR FURTHER INFORMATION CONTACT: Cecelia L. Davis, Procurement Analyst, at (202) 219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–54, FAR Case 2009–041.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 75 FR 62069 on October 7, 2010, to revise FAR 25.702, Prohibition on contracting with entities that conduct restricted business operations in Sudan, to add specific criteria including foreign policy aspects that an agency must address when applying to the President or his appointed designee for a waiver of the prohibition on awarding a contract to a contractor that conducts restricted business operations in Sudan. The rule also describes the consultation process that will be used by OFPP in support of the waiver review. No comments were received by the close of