

with two or more sources pursuant to the same solicitation.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 18, 19, and 52

[FAC 2005-86; FAR Case 2015-032; Item II; Docket No. 2015-0032; Sequence No. 1]

RIN 9000-AN13

Federal Acquisition Regulation; Sole Source Contracts for Women-Owned Small Businesses

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and the 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 regulatory changes made by the Small Business Administration (SBA) that provide for authority to award sole source contracts to economically disadvantaged women-owned small business concerns and to women-owned small business concerns eligible under the Women-Owned Small Business (WOSB) Program.

DATES: Effective: December 31, 2015.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before February 29, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005-86, FAR Case 2015-032, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2015-032.” Select the link “Comment Now” that corresponds with “FAR Case 2015-032.” Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2015-032” on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers,

1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-86, FAR Case 2015-032, 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. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-86, FAR Case 2015-032.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement regulatory changes that the SBA has made in its final rule published in the **Federal Register** at 80 FR 55019, on September 14, 2015, concerning sole source award authority under the WOSB Program. SBA’s final rule implements the statutory requirements of paragraph (a)(3) of section 825 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, Public Law 113-291, granting contracting officers the authority to award sole source contracts to both economically disadvantaged women-owned small business (EDWOSB) concerns and to WOSB concerns eligible under the WOSB Program.

The WOSB Program, as set forth in section 8(m) of the Small Business Act (15 U.S.C. 637(m)), authorizes contracting officers to restrict competition to EDWOSB concerns and to WOSB concerns eligible under the WOSB Program for Federal contracts, in certain industries that SBA has determined to be underrepresented or substantially underrepresented by small business concerns owned and controlled by women. DoD, GSA, and NASA published an interim rule for FAR Case 2010-015 in the **Federal Register** at 76 FR 18304, on April 1, 2011, providing guidance to contracting officers for the set-asides and implementing SBA’s final rule, published in the **Federal Register** at 75 FR 62258, on October 7, 2010. The FAR rule was finalized with changes and

published in the **Federal Register** at 77 FR 12913, on March 2, 2012. The establishment of a set-aside mechanism exclusively for women-owned small businesses was the first step towards leveling the playing field among the socioeconomic programs covered by the Small Business Act, *i.e.*, the HUBZone, service-disabled veteran-owned small-business, 8(a), and WOSB programs.

The WOSB Program was subsequently amended in section 825 of the NDAA for FY2015, which granted contracting officers the authority to award sole source contracts to EDWOSB concerns and WOSB concerns eligible under the WOSB Program. SBA established procedures for this new statutory authority in its final rule published in the **Federal Register** at 80 FR 55019, on September 14, 2015. As in SBA’s earlier WOSB Program set-aside rule, sole source awards under the WOSB program are only permitted in the industries that SBA has determined to be underrepresented or substantially underrepresented by WOSB concerns. Implementation of these sole source procedures in the FAR ensures that contracting officers will have the tools necessary to maximize Federal procurement opportunities for WOSB concerns.

II. Discussion and Analysis

In keeping with the tenets of the WOSB Program, the sole source authority may only be used in industry sectors that SBA has determined to be underrepresented or substantially underrepresented by WOSB concerns. The same eligibility requirements for participating in set-asides under the WOSB Program, set forth in SBA’s regulations at 13 CFR 127.100 through 127.509, also apply to sole source acquisitions. In general, an award under the WOSB program may be pursued on a sole source basis when the contracting officer does not have a reasonable expectation, through market research, that two or more eligible EDWOSB or WOSB concerns will submit offers at a fair and reasonable price, but identifies one responsible EDWOSB or WOSB that can perform at a fair and reasonable price. The dollar thresholds for sole source awards are equal to or less than \$6.5 million for manufacturing requirements and equal to or less than \$4 million for all other requirements, including all options.

This rule amends FAR subparts 2.1, 4.8, 6.3, 18.1, 19.0, 19.1, 19.3, 19.15, and 52.2. These changes are summarized in the following paragraphs:

A. Subpart 2.1, Definitions of Words and Terms

- **2.101, Definitions.** This section is amended to revise the definitions of the WOSB Program to include contracts awarded using the sole source authority.

B. Subpart 4.8, Government Contract Files

- **4.803, Contents of contract files.** This section is amended to include acquisitions awarded on a sole source basis under the WOSB Program.

C. Subpart 6.3, Other Than Full and Open Competition

- **6.302–5, Authorized or required by statute.** This section is amended to add the statutory authority to make sole source awards under the WOSB program (15 U.S.C. 637(m)).

D. Subpart 18.1, Available Acquisition Flexibilities

- **18.117, Awards to economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program.** This section is amended to add the statutory authority to make sole source awards under the WOSB Program.

PART 19—Small Business Programs**E. 19.000, Scope of Part.**

This section is amended to include the authority for sole source awards to EDWOSB concerns and WOSB concerns eligible under the WOSB program.

F. Subpart 19.1—Size Standards

- **19.102, Size standards.** This section is amended to make conforming changes.

G. Subpart 19.3—Determination of Small Business Status for Small Business Programs

- **19.308, Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.** This section is amended to include protests of sole source acquisitions.

H. Subpart 19.15, Women-Owned Small Business Program

- **19.1505, Set-aside procedures.** This section is amended for editorial changes.
- **19.1506, Women-Owned Small Business Program sole source awards.** This section replaces the current FAR 19.1506, Contract clauses, and discusses the conditions under which a

contracting officer may award a sole source contract to an EDWOSB concern or to a WOSB concern eligible under the WOSB Program.

- **FAR 19.1507, Contract clauses.** This section is renumbered (from 19.1506 to 19.1507) and amended to make conforming changes.

I. Subpart 52.2, Text of Provisions and Clauses

- **FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.** This clause is amended to make conforming changes.

- **FAR 52.219–29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns.** This clause is amended to add sole source awards.

- **FAR 52.219–30 Notice of Set-Aside for Women-Owned Small Business Concerns.** This clause is amended to add sole source awards.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the FAR clauses at 52.219–29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns, and 52.219–30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, in order to implement paragraph (a)(3) of section 825 of the NDAA for FY 2015. The Federal Acquisition Regulatory Council, pursuant to the authority granted in 41 U.S.C. 1905 and 1906, and the Administrator, Office of Federal Procurement Policy, pursuant to the authority granted in 41 U.S.C. 1907, have determined that the application of this statutory authority to contracts at or below the simplified acquisition threshold and to contracts for commercial items and commercially available off-the-shelf items, is in the best interests of the Federal Government.

IV. Executive Orders 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.

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

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement paragraph (a)(3) of section 825 of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, Public Law 113–291. Section 825 of the NDAA for FY 2015 included language granting contracting officers the authority to award sole source contracts to Women-Owned Small Businesses (WOSBs) and Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs) under the WOSB Program.

The objectives of this interim rule are to put the WOSB Program on a level playing field with other SBA Government contracting programs that have sole source authority, and to provide an additional, needed tool for agencies to meet the statutorily mandated goal of 5 percent of the total value of all prime contract and subcontract awards for WOSBs. The authorizing legislation is paragraph (a)(3) of section 825 of the NDAA for Fiscal Year 2015.

This rule may have a positive economic impact on WOSB concerns. The Dynamic Small Business Supplemental Search (DSB) lists approximately 41,500 firms as either WOSBs or EDWOSBs under the WOSB Program. An analysis of the Federal Procurement Data System from April 1, 2011 (the implementation date of the WOSB Program), through September 1, 2015, revealed that there were approximately 44,053 women-owned small business concerns, including 332 EDWOSBs and 1,063 WOSBs eligible under the WOSB Program, that received obligated funds from Federal contract awards, task or delivery orders, and modifications to existing contracts. This rule could affect a smaller number of EDWOSBs and WOSBs than those eligible under the WOSB Program since the sole source authority can only be used where a contracting officer does not have a reasonable expectation, through market research, that two or more eligible EDWOSB or WOSB concerns will submit offers at a fair and reasonable price; in addition, the sole source authority for WOSBs and EDWOSBs is limited to contracts valued at \$6.5 million or less for manufacturing contracts and \$4 million or less for all other contracts.

This interim rule does not impose any new reporting, recordkeeping or other compliance requirements for small businesses. This rule

does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the SBA. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. 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 the rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015-032), in correspondence.

VI. 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).

VII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to meet the Congressional intent of leveling the playing field between the Women-Owned Small Business (WOSB) Program and SBA's other socioeconomic contracting programs. Prior to passage of section 825 of the National Defense Authorization Act for Fiscal Year 2015, the WOSB Program was the only socioeconomic small business program that did not provide contracting officials the authority to make sole source awards to its intended beneficiaries.

WOSBs are an important growth area in the U.S. economy and yet the Federal Government has consistently failed to achieve the minimum five percent annual women-owned small business participation goal set forth in statute. As a result, women entrepreneurs continue to struggle to gain access to the Federal marketplace. This situation will persist, and women-owned small businesses will be excluded from valuable Federal procurement opportunities on a daily basis unless the sole source authority for EDWOSBs and WOSBs is implemented as quickly as possible. The new sole source authority allows contracting

officers to implement the preferences accorded under the WOSB Program to the fullest extent possible, and serves as an additional, needed tool to increase procurement opportunities for WOSBs.

The statute went into effect on the date of enactment, December 19, 2014. The SBA final rule went into effect October 14, 2015. 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 2, 4, 6, 18, 19, and 52

Government procurement.

Dated: December 17, 2015.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 6, 18, 19, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 2, 4, 6, 18, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

- 2. Amend section 2.101, paragraph (b)(2), the definition “Women-Owned Small Business (WOSB) Program” by—
 - a. Revising the introductory text of paragraph (1) and paragraph (1)(i);
 - b. Removing from paragraph (1)(ii) “Eligible” and adding to the end of the paragraph “in Federal procurement”; and
 - c. Removing from the last sentence in paragraph (2) “business concern” and adding “business (WOSB) concern” in its place.

The revisions read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Women-Owned Small Business (WOSB) Program. (1) *Women-Owned Small Business (WOSB) Program* means a program that authorizes contracting officers to limit competition, including award on a sole source basis, to—

(i) Economically disadvantaged women-owned small business (EDWOSB) concerns eligible under the WOSB Program for Federal contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are

underrepresented in Federal procurement; and

* * * * *

PART 4—ADMINISTRATIVE MATTERS

- 3. Amend section 4.803 by revising the introductory text of paragraph (a)(42) and paragraphs (a)(42)(ii)(A) and (B) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(42) When limiting competition, or awarding on a sole source basis, to economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program in accordance with subpart 19.15, include documentation—

* * * * *

(ii) * * *

(A) Underrepresented for EDWOSB concerns; or

(B) Substantially underrepresented for WOSB concerns.

* * * * *

PART 6—COMPETITION REQUIREMENTS

- 4. Amend section 6.302-5 by adding paragraph (b)(7) to read as follows:

6.302-5 Authorized or required by statute.

* * * * *

(b) * * *

(7) Sole source awards under the WOSB Program-15 U.S.C. 637(m) (see 19.1506).

* * * * *

PART 18—EMERGENCY ACQUISITIONS

- 5. Revise section 18.117 to read as follows:

18.117 Awards to economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program.

Contracts may be awarded to economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program on a competitive or sole source basis. (See subpart 19.15.)

PART 19—SMALL BUSINESS PROGRAMS

- 6. Amend section 19.000 by—
 - a. Revising paragraph (a)(3);

- b. Removing paragraph (a)(7);
- c. Redesignating paragraphs (a)(8) through (10) as paragraphs (a)(7) through (9), respectively; and
- d. Revising newly redesignated paragraph (a)(9).

The revisions read as follows:

19.000 Scope of part.

(a) * * *

(3) Setting acquisitions aside for exclusive competitive participation by small business, 8(a) business development participants, HUBZone small business concerns, service-disabled veteran-owned small business concerns, and economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program;

* * * * *

(9) Sole source awards to HUBZone small business concerns, service-disabled veteran-owned small business concerns, and EDWOSB concerns and WOSB concerns eligible under the WOSB Program.

* * * * *

- 7. Amend section 19.102 by revising the last sentence of paragraph (f)(1) to read as follows:

19.102 Size standards.

* * * * *

(f) * * *

(1) * * * However, see the limitations on subcontracting at 52.219–14 that apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards, 52.219–3 for HUBZone set-asides and HUBZone sole source awards, 52.219–27 for SDVOSB set-asides and SDVOSB sole source awards, 52.219–29 for economically disadvantaged women-owned small business (EDWOSB) set-asides and EDWOSB sole source awards, and 52.219–30 for set-asides and sole source awards to women-owned small business (WOSB) concerns eligible under the WOSB Program.

* * * * *

- 8. Amend section 19.308 by revising the section heading and paragraph (b)(1) to read as follows:

19.308 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.

* * * * *

(b)(1) For sole source acquisitions, the contracting officer or SBA may protest the offeror's status as an economically disadvantaged women-owned small

business (EDWOSB) concern or as a WOSB concern eligible under the WOSB Program. For all other acquisitions, an interested party (see 13 CFR 127.102) may protest the apparent successful offeror's EDWOSB or WOSB status.

* * * * *

- 9. Revise the heading of subpart 19.15 to read as follows:

Subpart 19.15—Women-Owned Small Business Program

* * * * *

- 10. Amend section 19.1505 by revising paragraph (a)(2) to read as follows:

19.1505 Set-aside procedures.

(a) * * *

(2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program when the acquisition—

(i) Is assigned a NAICS code in which SBA has determined that WOSB concerns are underrepresented in Federal procurement; or

(ii) Is assigned a NAICS code in which SBA has determined that WOSB concerns are substantially underrepresented in Federal procurement, as specified on SBA's Web site at <http://www.sba.gov/WOSB>.

* * * * *

19.1506 [Redesignated as 19.1507]

- 11. Redesignate section 19.1506 as section 19.1507.

- 12. Add section 19.1506 to read as follows:

19.1506 Women-Owned Small Business Program sole source awards.

(a) A contracting officer shall consider a contract award to an EDWOSB concern on a sole source basis (see 6.302–5(b)(7)) before considering small business set-asides (see 19.203 and subpart 19.5) provided none of the exclusions at 19.1504 apply and—

(1) The acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are underrepresented in Federal procurement;

(2) The contracting officer does not have a reasonable expectation that offers would be received from two or more EDWOSB concerns; and

(3) The conditions in paragraph (c) of this section exist.

(b) A contracting officer shall consider a contract award to a WOSB concern (including EDWOSB concerns) eligible

under the WOSB Program on a sole source basis (see 6.302–5(b)(7)) before considering small business set-asides (see 19.203 and subpart 19.5) provided none of the exclusions at 19.1504 apply and—

(1) The acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are substantially underrepresented in Federal procurement;

(2) The contracting officer does not have a reasonable expectation that offers would be received from two or more WOSB concerns (including EDWOSB concerns); and

(3) The conditions in paragraph (c) of this section exist.

(c)(1) The anticipated award price of the contract, including options, will not exceed—

(i) \$6.5 million for a requirement within the NAICS codes for manufacturing; or

(ii) \$4 million for a requirement within any other NAICS codes.

(2) The EDWOSB concern or WOSB concern has been determined to be a responsible contractor with respect to performance.

(3) The award can be made at a fair and reasonable price.

(d) The SBA has the right to appeal the contracting officer's decision not to make a sole source award to either an EDWOSB concern or WOSB concern eligible under the WOSB program.

12. Revise newly redesignated section 19.1507 to read as follows:

19.1507 Contract clauses.

(a) The contracting officer shall insert the clause 52.219–29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-owned Small Business Concerns, in solicitations and contracts for acquisitions that are set aside or reserved for, or awarded on a sole source basis to, EDWOSB concerns under 19.1505(b) or 19.1506(a). 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, or Sole Source Award to, 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, or awarded on a sole source basis to WOSB concerns under 19.1505(c) or 19.1506(b). 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 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 13. Amend section 52.212–5 by revising the date of the clause and paragraphs (b)(23) and (24) to read as follows:

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

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Dec 2015)

* * * * *

(b) * * *
 (23) 52.219–29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).

(24) 52.219–30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).

* * * * *

- 14. Amend section 52.219–29 by revising the section heading, the introductory paragraph, the title and date of the clause, and paragraph (b)(1) to read as follows:

52.219–29 Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns.

As prescribed in 19.1507, insert the following clause:

Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015)

* * * * *

(b) * * *

(1) Contracts that have been set aside or reserved for, or awarded on a sole source basis to, EDWOSB concerns;

* * * * *

- 15. Amend section 52.219–30 by revising the section heading, the introductory paragraph, the title and date of clause, and paragraph (b)(1) to read as follows:

52.219–30 Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

As prescribed in 19.1507, insert the following clause:

Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015)

* * * * *

(b) * * *

(1) Contracts that have been set aside or reserved for, or awarded on a sole source basis to, WOSB concerns eligible under the WOSB Program;

* * * * *

[FR Doc. 2015–32428 Filed 12–30–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–86; FAR Case 2015–034; Item III; Docket No. 2015–0034; Sequence No. 1]

RIN 9000–AN15

Federal Acquisition Regulation; New Designated Countries—Montenegro and New Zealand

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 add Montenegro and New Zealand as new designated countries under the World Trade Organization Government Procurement Agreement (WTO GPA) and update the list of parties to the Agreement on Trade in Civil Aircraft.

DATES: Effective: February 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–86, FAR Case 2015–034.

SUPPLEMENTARY INFORMATION:

I. Background

On July 15, 2015, Montenegro became a party to the WTO GPA. New Zealand became a party to the WTO GPA on August 12, 2015. The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides the authority for the President to waive the Buy American Act and other

discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this authority to the U.S. Trade Representative.

Effective July 15, 2015, because Montenegro became a party to the WTO GPA, and because the U.S. Trade Representative has determined that Montenegro will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, the U.S. Trade Representative published a notice in the **Federal Register** at 80 FR 39829 on July 10, 2015, waiving the Buy American Act and other discriminatory provisions for eligible products from Montenegro.

Effective August 12, 2015, because New Zealand became a party to the WTO GPA, and because the U.S. Trade Representative has determined that New Zealand will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, the U.S. Trade Representative published a notice in the **Federal Register** at 80 FR 48386 on August 12, 2015, waiving the Buy American Act and other discriminatory provisions for eligible products from New Zealand.

In addition, the Office of the U.S. Trade Representative has also indicated that Montenegro is a party to the Agreement on Trade in Civil Aircraft. The U.S. Trade Representative has waived the Buy American Act for civil aircraft and related articles from countries that are parties to the Agreement on Trade in Civil Aircraft.

II. Discussion and Analysis

Therefore, this rule adds Montenegro and New Zealand to the list of World Trade Organization Government Procurement Agreement countries wherever it appears in the FAR, whether as a separate definition, part of the definition of “designated country” or “Recovery Act designated country,” or as part of the list of countries exempt from the prohibition of acquisition of products produced by forced or indentured child labor (FAR 22.1503, 25.003, 52.222–19, 52.225–5, 52.225–11, and 52.225–23).

This rule also updates FAR 25.407 and 52.225–7 to reflect that Montenegro is already a party to the Agreement on Trade in Civil Aircraft.

Conforming changes were required to FAR 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, and 52.213–4, Terms