

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR-2020-0051, Sequence No. 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2020-05; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of a final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2020-05. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective date see the separate document, which follows.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868 or by email at mahruba.uddowla@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2020-05, FAR Case 2014-002.

RULE LISTED IN FAC 2020-05

Subject	FAR case	Analyst
Set-Asides Under Multiple-Award Contracts	2014-002	Uddowla.

ADDRESSES: The FAC, including the SECG, is available via the internet at <http://www.regulations.gov>.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this item summary. FAC 2020-05 amends the FAR as follows:

Set-Asides Under Multiple-Award Contracts (FAR Case 2014-002)

This final rule amends the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule at 78 FR 61114 on October 2, 2013. SBA's final rule implements the statutory requirements set forth at section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)). Section 1331 provided authority for three acquisition techniques to facilitate contracting with small businesses on multiple-award contracts:

- (1) Setting aside part or parts of the requirement for small businesses.
- (2) Reserving one or more contract awards for small business concerns under full and open multiple-award procurements.
- (3) Setting aside orders placed against multiple-award contracts, notwithstanding the fair opportunity requirements of 10 U.S.C. 2304c(b) and 41 U.S.C. 4106(c).

This final rule provides contracting officers additional guidance on the use of partial set-asides, reserves, and set-asides of orders under multiple-award contracts. This final rule may have a positive economic impact on any small

business entity that wishes to participate in the Federal marketplace. The section 1331 authorities are expected to provide small businesses greater access to multiple-award contracts, including orders issued against such contracts. There is an upward adjustment to the annual burden associated with an existing information collection, to account for size and socioeconomic status representations for individual task and delivery orders.

This rule also finalizes the interim rule published November 2, 2011, under FAR Case 2011-024.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2020-05 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2020-05 is effective February 27, 2020 except for FAR Case 2014-002, which is effective March 30, 2020.

Linda W. Neilson,
Director, Defense Acquisition Regulations, Department of Defense.

Jeffrey A. Koses,
Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2020-02027 Filed 2-26-20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, 8, 9, 10, 13, 15, 16, 19, 42, and 52

[FAC 2020-05; FAR Case 2014-002; Docket No. FAR-2014-0002; Sequence No. 1]

RIN 9000-AM93

Federal Acquisition Regulation; Set-Asides Under Multiple-Award Contracts

AGENCY: 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 implement regulatory changes made by the Small Business Administration, which provide Governmentwide policy for partial set-asides and reserves, and for set-asides of orders for small business concerns under multiple-award contracts.

DATES: Effective March 30, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868 or by email at Mahruba.uddowla@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2020-05, FAR Case 2014-002.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 81 FR 88072 on December 6, 2016, to revise the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule at 78 FR 61114, dated October 2, 2013, regarding the use of small business partial set-asides, reserves, and set-asides of orders placed under multiple-award contracts. As part of the implementation of reserves of multiple-award contracts, the proposed rule removed the term “reserve” in the FAR where it is not related to reserves of multiple-award contracts. SBA’s final rule implements the statutory requirements set forth at section 1331 of the Small Business Jobs Act of 2010 (Jobs Act) (15 U.S.C. 644(r)). This final FAR rule also finalizes the interim FAR rule published at 76 FR 68032 on November 2, 2011, under FAR Case 2011-024.

Fourteen respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments received and any changes made to the rule as a result of the public comments are provided as follows:

A. Summary of Significant Changes

This final rule makes the following significant changes from the proposed rule:

- Removal of the term “HUBZone order.” This term has been removed throughout the final rule.
- Requirement to assign a North American Industry Classification System (NAICS) code. The final rule clarifies that NAICS code(s) must be assigned to all solicitations, contracts, and task and delivery orders, and that the NAICS code assigned to a task or delivery order must be a NAICS code assigned to the multiple-award contract. This clarification appears at FAR

19.102, with cross references in 8.404, 8.405-5, and 16.505.

- Requirement to assign more than one NAICS code and associated size standard for multiple-award contracts where a single NAICS code does not describe the principal purpose of both the contract and all orders to be issued under the contract. In the proposed rule, the date for implementation of this particular requirement was listed as January 31, 2017. For the final rule, this date has been extended to October 1, 2022. This is when Governmentwide systems are expected to accommodate the requirement. This date also allows time for Federal agencies to budget and plan for internal system updates across their multiple contracting systems to accommodate the requirement. Use of this date in the final rule means that the assignment of more than one NAICS code for multiple-award contracts is authorized only for solicitations issued after October 1, 2022. Before this date, agencies may continue awarding multiple-award contracts using any existing authorities, including any addressed in this rule, but shall continue to report one NAICS code and size standard which best describes the principal purpose of the supplies or services being acquired.

- Rerepresentation of size status for multiple-award contracts with more than one NAICS code. FAR 19.301-2 is revised to clarify that, for multiple-award contracts with more than one NAICS code assigned, a contractor must rerepresent its size status for each of those NAICS codes. A new Alternate I is added for the clause at 52.219-28 to allow rerepresentations for multiple NAICS codes, and a prescription is added at 19.309(c). Alternate I will be included in solicitations that will result in multiple-award contracts with more than one NAICS code.

- Rerepresentation for orders under multiple-award contracts. The clause at 52.219-28 is revised to relocate the paragraph addressing rerepresentation for orders closer to the beginning of the clause and to renumber subsequent paragraphs.

- Representation of size and socioeconomic status. FAR 19.301-1 is revised to clarify that, for orders under basic ordering agreements and FAR part 13 blanket purchase agreements (BPAs), offerors must be a small business concern identified at 19.000(a)(3) at the time of award of the order, and that a HUBZone small business concern is not required to represent twice for an award under the HUBZone Program. A HUBZone small business concern is required to represent at the time of its initial offer and be a HUBZone small

business concern at time of contract award.

- Applicability of the limitations on subcontracting to orders issued directly to one small business under a reserve. The final rule clarifies that the limitations on subcontracting and the nonmanufacturer rule apply to orders issued directly to one small business concern under a multiple-award contract with reserves. This clarification appears in multiple locations in parts 19 and 52. The final rule also clarifies the limitations on subcontracting compliance period for orders issued directly, under multiple-award contracts with reserves, to small businesses who qualify for any of the socioeconomic programs. These clarifications appear in subparts 19.8, 19.13, 19.14, and 19.15, and in the clauses at 52.219-3, 52.219-14, 52.219-27, 52.219-29, and 52.219-30.

- Compliance period for the limitations on subcontracting. The final rule revises the proposed text at sections 19.505, 19.809, 19.1308, 19.1407, and 19.1507 to be consistent with the implementing clauses for those sections. The clauses reflect that the contracting officer has discretion on whether the compliance period for a set-aside contract is at the contract level or at the individual order level.

- Fair opportunity and orders issued directly to one small business under a reserve. The final rule addresses orders issued directly to one small business under a reserve at FAR 16.505.

- Conditions under which an order may be issued directly to an 8(a) contractor under a reserve. The final rule clarifies in 19.804-6 the conditions under which an order can be issued directly to an 8(a) contractor on a multiple-award contract with a reserve.

- Set-asides of orders under multiple-award contracts. At FAR 19.507, the prescription for Alternate I of the clause at 52.219-13 is revised to apply to any multiple-award contract under which orders will be set aside, regardless of whether the multiple-award contract contains a reserve.

- Consistent language for “rule of two” text. FAR 19.502-3, 19.502-4, and 19.503 are revised for consistency with FAR 19.502-2(a), which most closely matches the “rule of two” in the Small Business Act (15 U.S.C. 644(j)(1)).

- Documentation of compliance with limitations on subcontracting. The requirement for contracting officers to document contractor compliance with the limitations on subcontracting is removed from subparts 19.5, 19.8, 19.13, 19.14, and 19.15. FAR part 4 and subpart 42.15 already prescribe documentation of contractor compliance

with various contract terms and conditions, including the limitations on subcontracting. FAR subpart 42.15 is revised to clarify that performance assessments shall include, as applicable, a contractor's failure to comply with the limitations on subcontracting.

- Clarification of “domestically produced or manufactured product.” FAR 19.6 is revised to use the phrase “end item produced or manufactured in the United States or its outlying areas” instead of “domestically produced or manufactured product.”

- Subcontracting plans for multiple-award contracts with more than one NAICS code. FAR subpart 19.7 is revised to provide guidance to contracting officers on how to apply the requirement for small business subcontracting plans to multiple-award contracts assigned multiple NAICS codes. With the requirement to assign multiple NAICS codes, it will be possible for a contractor to be both a small business concern and another than small business concern for a single contract.

- HUBZone price evaluation preference and reserves. FAR subpart 19.13 is revised to clarify that the HUBZone price evaluation preference shall not be used for the reserved portion of a solicitation for a multiple-award contract. The price evaluation preference shall be used in the portion of a solicitation for a multiple-award contract that is not reserved. In addition, the clause at 52.219-4 is revised to remove the proposed text that stated the HUBZone price evaluation preference did not apply to solicitations that have a reserve for HUBZone small business concerns, since that is not accurate.

- Performance by a HUBZone small business concern. FAR 19.1308 is revised to specify performance by a HUBZone small business concern instead of performance in a HUBZone. The related changes that were proposed in the clause at 52.219-4, paragraph (d)(2), are not being adopted as they are no longer accurate.

- Separate provision for reserves and clause for orders issued directly under a reserve. The final rule provides a new solicitation provision at 52.219-31, Notice of Small Business Reserve, and prescription at 19.507 to address information and requirements that are related to reserves of multiple-award contracts and are appropriate for inclusion only in the solicitation. These requirements and information were proposed as part of the clause at 52.219-XX (now 52.219-32); however, since they only apply prior to contract award, the final rule relocates them to a

separate provision. The final rule also revises the clause at 52.219-32 to address only orders issued directly to one small business under a reserve. The title of the clause reflects the revised content.

B. Analysis of Public Comments

1. Support for the Rule

Comment: Multiple respondents stated support for the changes in the proposed rule. More specifically, one respondent supported the overall changes and clarifications in the proposed rule. Three respondents supported the clarifications regarding the partial set-aside process; the guidance for the new concept of reserves; and the flexibility of contracting officers to establish terms that state that all task orders under a multiple-award contract will be set aside. Additionally, one respondent supported the clarifications regarding agencies taking credit following small business size and socioeconomic status rerepresentations.

Response: The Councils acknowledge these areas of support.

2. Mandatory Set-Aside of Orders at or Below the Simplified Acquisition Threshold (15 U.S.C. 644(j))/ Kingdomware Decision

Comment: Two respondents, citing *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969 (2016), stated that because Congress used “shall” at 15 U.S.C. 644(j) and “may” at 15 U.S.C. 644(r), statutory construction requires that small business set-asides and reserves described in section 1331 of the Jobs Act are mandatory, not discretionary. In addition, several respondents stated that if “whole contracts” under \$150,000 are automatically reserved for small businesses, task orders within the same dollar value should also be reserved for small businesses. Further, one respondent commented that the FAR Council may not interpret 15 U.S.C. 644(j).

Response: The Kingdomware decision focused on the Veterans Benefits, Health Care, and Information Technology Act of 2006 (VA statute), 38 U.S.C. 8127, not a requirement in the Small Business Act. The Kingdomware decision is silent on the construction of the Small Business Act. The VA statute and the Small Business Act are constructed differently, with the former statute applying only to acquisitions of the Department of Veterans Affairs. Further, the Councils agree that it is not within the scope of this FAR case to interpret 15 U.S.C. 644(j). The purpose of this

case is to amend the FAR to incorporate regulatory changes made by SBA in its final rule at 78 FR 61114, dated October 2, 2013. SBA's final rule implements discretionary use of order set-asides, partial set-asides, and reserves of multiple-award contracts at 13 CFR 125.2(e)(1)(ii), consistent with section 1331 of the Jobs Act (15 U.S.C. 644(r)). As a result, no revisions are made in the final rule in response to the comments.

Comment: Several respondents stated that because the court in *Kingdomware* held that a task order was a contract, “contract” as written in 15 U.S.C. 644(j) includes task orders issued from multiple-award contracts, making order set-asides on multiple-award contracts mandatory not discretionary when applying the “rule of two.” The “rule of two” refers to the requirement in the Small Business Act (15 U.S.C. 644(j)(1)) that mandates setting aside a contract with an anticipated value between the micro-purchase threshold and the simplified acquisition threshold for small business unless two or more small businesses are not expected to submit offers that are competitive in terms of price, quality, and delivery. Respondents also cited to *Aldevra*, B-406205, 2012 CPD ¶ 112 (Comp. Gen. Mar. 14, 2012), emphasizing that SBA clarified that orders under \$150,000 shall be exclusively reserved for small business concerns, including Federal Supply Schedule (FSS) orders and commercially available off-the-shelf (COTS) items. Additionally, one respondent stated that an exclusive reservation of contracts at or below the simplified acquisition threshold for multiple-award contracts will increase economic opportunity for small business.

Response: The “rule of two” described in *Kingdomware* refers to the VA statute, 38 U.S.C. 8127, not a requirement in the Small Business Act. The *Kingdomware* decision is silent on the construction of the Small Business Act. The VA statute and the Small Business Act are written differently, with the former statute applying only to acquisitions of the U.S. Department of Veterans Affairs. The VA statute only speaks to contracts and is silent on the handling of orders. Because of this silence, the Court concluded that the mandate applicable to contracts also applied to orders, since orders have the legal effect of contracts. By contrast, the Small Business Act has separate and distinct provisions addressing contracts and orders and addresses each in a different manner. Section 1331 of the Jobs Act (15 U.S.C. 644(r)) addresses order set-asides and makes the application of the “rule of two”

discretionary for orders placed under multiple-award contracts only. 15 U.S.C. 644(j) applies to contracts and mandates application of the “rule of two” for contracts valued at the simplified acquisition threshold or less.

15 U.S.C. 644(r) is specific in that it only applies to multiple-award contracts. Legislative history demonstrates that prior to 15 U.S.C. 644(r), there was a mixed record of small business participation on multiple-award contracts. Congress was clear in section 1331 of the Jobs Act that under a multiple-award contract, agencies may, at their discretion, effectuate a partial set-aside or reserve of a multiple-award contract or conduct a set-aside of orders under a multiple-award contract. As a result, no revisions are made in the final rule in response to the comments.

3. Conflicts Between FAR and SBA Regulations

a. Old Limitations on Subcontracting

Comment: Multiple respondents commented that the text related to the limitations on subcontracting and the nonmanufacturer rule in the proposed rule does not align with SBA’s final rule as stated in 81 FR 34259 and in current 13 CFR 121.406 and 125.6. To address this conflict, respondents requested the related text in the FAR rule be revised to state the SBA current rules.

Response: This FAR case was initiated prior to the publication of the SBA final rule (81 FR 34243, May 31, 2016), which updated the limitations on subcontracting and the nonmanufacturer rule to implement section 1651 of the National Defense Authorization Act for Fiscal Year 2013. DoD, GSA, and NASA opened a separate FAR case (2016–011, Revision of Limitations on Subcontracting) to implement SBA’s final rule. Therefore, this final FAR rule will not be revised to incorporate the May 31, 2016, SBA final rule.

b. Other Conflicts

Comment: One respondent commented that the timeframe for protests under a Multiple Award Schedule established at FAR 19.302(d)(3) appears to contradict SBA’s regulations on timeliness stated in 13 CFR 121.1001(a)(3). The respondent quotes FAR 19.302(d), “In order to affect a specific solicitation, a protest must be timely. SBA’s regulations on timeliness are contained in 13 CFR 121.1004” and follows this by stating, “FAR 19.302(d)(3) is in conflict with SBA’s timeliness regulations” at 13 CFR 121.1004(a)(3).

Response: The proposed rule did not amend FAR 19.302(d)(3). The Councils agree that the language should be clarified. However, the comment is not within the scope of this rule, and the Councils will address this issue in a separate FAR case.

4. Information Collections

a. Two Representations for HUBZone Small Business Concerns

Comment: One respondent asserted that the rule is adding a new information collection requirement at FAR 19.301–1(c) by requiring a HUBZone small business concern to represent its size and socioeconomic status twice—first at the time of the initial offer and again at the time of contract award. Moreover, the respondent stated that there is no corresponding procedure in FAR part 19 requiring the contracting officer to obtain the representation at the time of contract award, nor is there a requirement in the provisions at FAR 52.212–3 or FAR 52.219–1 for the offeror to make a second representation of size and socioeconomic status at the time of contract award.

Response: The Councils did not intend to create a second representation requirement for HUBZone small business concerns. The text has been revised at proposed FAR 19.301–1(c) to reflect the existing requirement at FAR 19.1303(d).

b. Compliance Reporting for the Limitations on Subcontracting

Comment: In reference to the requirement for the contracting officer to document a contractor’s compliance with the limitations on subcontracting as part of their performance evaluation, one respondent asserted that the FAR rule does not include a corresponding recordkeeping or reporting requirement. As a result, the respondent stated that contracting officers will begin to impose their own unique recordkeeping and reporting requirements through the use of local clauses, which is the kind of uncoordinated information collection the Paperwork Reduction Act was designed to prevent. The respondent recommended that the rule obtain an OMB control number.

Response: The requirement for contracting officers to document contractor compliance with various contract terms and conditions, including compliance with the limitations on subcontracting, is already prescribed in FAR part 4 and subpart 42.15. Therefore, the additional language requiring documentation related to compliance with the

limitations on subcontracting has been removed from the final rule. For clarification, failure to comply with the limitations on subcontracting has been added as an example at section 42.1503.

5. North American Industry Classification System (NAICS) Codes

a. Burden and Impact on Small Business Participation

Comment: One respondent commented that while the proposed rule is consistent with the guidance in SBA’s regulations at 13 CFR 121.402, the proposed rule could increase administrative burden and workload for GSA Schedule contractors and contracting officers. The respondent stated the proposed rule could also possibly eliminate some small companies from participating in GSA schedule contracts. The respondent identified possible strategies for GSA to comply with the NAICS code assignment procedures proposed at FAR 19.102(b)(2)(ii) and the impacts associated with each strategy. The respondent urged GSA and SBA to work together to develop a more cost-efficient mechanism for assigning NAICS codes to Schedule contracts. In addition, the respondent commented that depending on the implementation strategy pursued, some Schedule contractors could lose their small business status under the Schedule contract.

Response: As noted by the respondent, the proposed requirement at FAR 19.102(b)(2)(ii) is consistent with SBA’s regulations at 13 CFR 121.402. GSA, as the manager of the FSS/ Multiple Award Schedule Program, is responsible for ensuring the solicitations and resultant contracts under that Program comply with FAR requirements regarding NAICS code assignment. GSA will take sufficient time to implement the requirement to ensure industry partners are aware of upcoming changes and are given an opportunity to provide feedback during the process, as appropriate. The Councils note that the basic premise of assigning NAICS codes to requirements is that the selected NAICS code best describes the principal purpose of the supply or service being acquired.

b. Application to Subcontracting Plans

Comment: One respondent recommended changes to FAR subpart 19.7, The Small Business Subcontracting Program, to clarify whether or not a subcontracting plan is required if an offeror represents itself as other than small under any distinct portion or category of a multiple-award contract for which it submits an offer in

accordance with proposed FAR 19.301–1(a)(1)(ii).

Response: The Councils have revised FAR subpart 19.7 in the final rule to provide the recommended clarification. When an offeror represents itself as other than small for any portion or category of a solicitation for a multiple-award contract, that offeror may be required to submit a small business subcontracting plan either for that portion or category, or for the entirety of the contract, at the offeror's discretion. The estimated value for the distinct portion(s) or category(s) for which an offeror is considered other than small, and whether there are subcontracting opportunities, should be the basis for the decision to require a subcontracting plan.

c. Small Business Eligibility

Comment: One respondent recommended that proposed FAR 19.301–1(a)(1)(ii) be revised to address the current GSA Schedule contract practices and clarify that if an agency lists more than one NAICS under a Special Item Number (SIN) that the offeror is eligible as a small business if it meets the size standard of one or more NAICS under that SIN.

Response: The practice of assigning more than one NAICS code to a particular SIN is not compliant with the proposed FAR 19.102(b)(2)(ii)(B), which requires that a single NAICS code be assigned to each distinct portion or category of the solicitation (e.g., SIN). As such, the Councils have determined that no changes to FAR 19.301–1(a)(1)(ii) are necessary.

Comment: One respondent recommended revisions to the proposed FAR 19.301–2(d)(1) and (2) to clarify that an agency may not include in its contracting goal achievements the value of orders after the date of a former small business concern's rerepresentation as other than small.

Response: The Councils did not adopt the suggested revision to proposed FAR 19.301–2(d)(1) since it is inconsistent with the existing text at FAR 19.301–2(d) that size status is revised in the Federal Procurement Data System (FPDS) for actions under a particular contract going forward from the point when the contracting officer modifies the contract to reflect the rerepresentation. FAR 19.301–2(d)(2) addresses a contractor's rerepresentation in response to a specific order, therefore the respondent's clarification is not applicable. The proposed FAR text already states that the value of the order cannot be included in the ordering agency's small business prime contracting goal achievements.

6. Contracting Officer Discretion

Comment: A number of respondents stated support for the greater flexibility in the proposed rule but are concerned that agencies are inappropriately structuring large contracts that restrict competition for women-owned small businesses and HUBZone small businesses. In addition, one respondent stated that allowing the contracting officer discretion in selecting a partial set-aside or reserve for multiple-award contracts will be in direct conflict to the stated goals of strengthening small business programs.

Response: Section 1331 (15 U.S.C. 644(r)) provides discretion to the contracting officer in using an array of tools to enhance small business participation on multiple-award contracts. Additionally, the proposed rule included a documentation requirement for multiple-award contracts when contracting officers do not use at least one of the tools provided by section 1331.

7. Further Clarifications

a. When Is a Reserve Appropriate

Comment: One respondent asserted that there is a conflict between the language at FAR 19.503 and FAR 19.504(c)(1) because the proposed regulation regarding reserves makes it appear that a reserve is appropriate when there is no expectation that there will be competition among small businesses but proposed 19.504(c) establishes a process for setting aside and competing orders under a reserve. The respondent recommended that either FAR 19.503 be clarified or that 19.504(c)(1) be deleted.

Response: The language at FAR 19.503 addresses factors the contracting officer must consider at the contract level. Multiple-award solicitations with reserves may result in contract awards to more than one small business. FAR 19.504(c)(1) addresses procedures at the order level when more than one small business receives an award under a multiple-award solicitation with a reserve. Therefore, additional clarification is not required in the final rule.

b. Applicability of the Limitations on Subcontracting and the Nonmanufacturer Rule to Reserves

Comment: One respondent pointed out that it appears in the proposed rule that the limitations on subcontracting and the nonmanufacturer rule will not apply to orders issued directly to a small business under a reserve. The respondent recommended the language

should be clarified if that application is not the intent.

Response: The final rule clarifies that the limitations on subcontracting and the nonmanufacturer rule apply to orders issued directly to a small business under a reserve.

Comment: One respondent recommended adding clarification to FAR 19.501(h) to be consistent with the language at FAR 19.503(d).

Response: The Councils determined that additional clarification at FAR 19.501(h), now redesignated as 19.501(g), would be redundant. However, 19.501(h) is revised to remove duplicative text and refer the reader to FAR 19.505, which addresses the limitations on subcontracting and the nonmanufacturer rule.

c. Setting Aside Orders Against Set-Aside Multiple-Award Contracts

Comment: One respondent suggested adding language to FAR 19.504(a) to clarify the ability to set aside orders for a socioeconomic business type under a multiple-award contract that has been set aside for small business.

Response: The proposed FAR rule did not explicitly address whether orders can be set aside under a multiple-award contract that is itself set aside, but neither did it prohibit such an action. SBA's regulations at 13 CFR 125.2(e)(6) only address setting aside orders under "full and open" multiple-award contracts. FAR 19.504 is consistent with SBA's current regulations.

SBA contemplated setting aside orders against set-aside multiple-award contracts in their final rule published at 78 FR 61114. The concerns identified in that SBA final rule have since been addressed to enable fair and proper implementation of these set-aside orders. Specifically, the SBA final rule published at 81 FR 34243 standardized the limitations on subcontracting and the nonmanufacturer rule across the socioeconomic programs. In addition, some agencies have pursued the strategy of allowing set-aside orders against set-aside multiple-award contracts, including notification and incorporation of the clause at FAR 52.219–13, and have not encountered any industry concerns.

Therefore, this final FAR rule cannot provide further clarity. The Councils note that SBA is exploring providing guidance on this issue through a separate rulemaking, and the Councils may pursue a separate FAR rule on the subject.

d. Sole Sourcing Under Multiple-Award Contracts

Comment: One respondent recommended adding a sentence to the end of FAR 19.504(a) to clarify that set-asides are for competition and do not include sole source orders. The respondent also suggested a revision to FAR 19.504(c)(2) and FAR 52.219–XX(d) (now 52.219–32(b)) to clarify that orders issued directly to a small business concern under reserves should not be considered a sole source or a set-aside award.

Response: The Councils agree that orders issued directly under a reserve are neither sole source awards nor set asides as identified in the FAR. Orders issued directly under a reserve have a distinct authority based on 15 U.S.C. 644(r)(2) and (3). The Councils do not consider it necessary to include the recommended sentence at FAR 19.504(a), 19.504(c)(2), and 52.219–32.

However, the title of the FAR 19.504 is retitled “Orders under multiple-award contracts” to more accurately describe the guidance provided. In addition, the final rule is amended to add language at FAR 16.505(b)(1)(i)(B) to identify orders issued directly to a small business concern under a reserve as allowable. Such orders are permissible per section 1331 (15 U.S.C. 644(r)) and SBA’s final rule at 78 FR 61114, dated October 2, 2013.

Comment: One respondent asserted that the language in FAR 6.302–5(b)(4) provides sole source authority for all of the small business concerns identified in FAR 19.000(a)(3) except the small business category. The respondent recommended that small businesses be added to the “list” of sole source acquisition strategies at 6.302–5(b), since the proposed language at FAR 19.504(c)(2) provides that the contracting officer may issue orders directly to one small business concern for work that it can perform when there is only one contract award to any one type of small business concern identified in FAR 19.000(a)(3).

Response: The sole source authorities identified in FAR 6.302–5(b) for women-owned small business, service-disabled veteran-owned small business, 8(a) participants, and HUBZone small business concerns apply to contracts, not orders. However, the Councils addressed the concern at the order level by adding language to FAR 16.505(b)(1)(i)(B) to identify orders issued directly to a small business concern under a reserve as allowable. Such orders are permissible per section 1331 (15 U.S.C. 644(r)) and SBA’s final

rule at 78 FR 61114, dated October 2, 2013.

e. Application of the HUBZone Price Evaluation Preference to Full and Open Multiple-Award Contracts

Comment: One respondent wanted to ensure that the price evaluation preference (PEP) for HUBZone small business concerns may be used in acquisitions conducted using full and open competition for multiple-award contracts.

Response: FAR subpart 19.13 allows use of the PEP in acquisitions conducted using full and open competition for multiple-award contracts.

8. Multiple Award Schedule/FSS Issues

a. Compliance With Limitations on Subcontracting by End of Contract Period

Comment: One respondent commented that, with regard to the proposed language in FAR 19.505(b), it is not clear why contracting officers on GSA schedules and multiple-award contracts are not given the option to require compliance with the limitations on subcontracting by the end of the base contract as with other contracts. The respondent stated that it would be reasonable to afford Schedules and other multiple-award contracts that option and recommended that the FAR rule remove the proposed text at FAR 19.505(b)(2), which specifies that for orders that are set aside, compliance with the limitations on subcontracting is required for the performance period of that order.

Response: FAR 19.505(b) provides guidance on the compliance period for the limitations on subcontracting for all relevant scenarios: for contracts that have been set aside and for orders that have been set aside. Paragraph (b)(1) provides guidance for contracts that are set aside. The term “contract” includes Multiple Award Schedule contracts and other multiple-award contracts. Thus, contracting officers for those contract vehicles that are set aside have the option of requiring compliance with the limitations on subcontracting by the end of the performance period of the contract or by the performance period of each individual order under the contract. Paragraph (b)(2) provides guidance for orders that are set aside. When an order is set aside, compliance with the limitations on subcontracting must apply only to the performance period of that order because the multiple-award contract under which it is placed may not have been set aside.

Therefore, FAR 19.505(b)(2) remains in the final rule.

b. Nonmanufacturer Rule Application

Comment: One respondent suggested clarification that the exception under \$25,000 to the nonmanufacturer rule, which applies to orders set aside under a multiple-award contract, also applies to orders set aside under a “Federal Supply Schedule” contract.

Response: The Councils believe it is unnecessary to clarify that a “multiple-award contract” includes a FSS contract, given that FAR 2.101 already defines the term “multiple-award contract” as including a “Multiple Award Schedule contract issued by GSA,” *i.e.*, a FSS contract. Therefore, no clarification is made in the final rule.

c. Assigning NAICS Codes to FSS Orders

Comment: One respondent stated that the proposed text at FAR 19.102(b)(3)(i), which requires that orders under multiple-award contracts whose solicitations were issued on or before January 31, 2017, be assigned the same NAICS code and corresponding size standard designated in the multiple-award contract under which they are placed, will be problematic for FSS orders and suggested removing the text. The respondent explained that under the FSS program, each contractor under the same Schedule may have a different NAICS code assigned to the FSS contract because NAICS codes are assigned based on the contractor’s “primary” SIN, and the primary SIN may differ across contractors under the same Schedule. As a result, the respondent questioned whether compliance with proposed 19.102(b)(3)(i) will result in FSS contractors being eliminated from competition for a given order if that contractor has a different primary SIN (and associated NAICS code) than the SIN under which an order is placed.

Response: The Councils note that the proposed text at FAR 19.102(b)(3)(i) is explaining the current practice for assigning NAICS codes to orders placed against FSS contracts prior to implementation of this FAR rule: Orders, including FSS orders, are assigned the same NAICS code as the parent, multiple-award contract. The Councils are not aware that FSS contractors are being eliminated from competition for FSS orders due to the NAICS code assigned to their FSS contract. Once the open and continuous FSS solicitations are amended and FSS contracts are modified in accordance with FAR 19.102(b)(2)(ii), FSS orders

will be required to comply with the proposed text at 19.102(b)(3)(ii)(B).

9. Order-Level Rerepresentations of Small Business Status

Comment: One respondent recommended against providing authority for a contracting officer to require rerepresentation of size and socioeconomic status prior to issuance of a task order. The respondent believes that small businesses should be allowed to grow larger without losing any small business opportunities.

Response: Providing authority for the contracting officer to require rerepresentation of size and socioeconomic status for task orders is consistent with SBA's final rule implementing section 1331 of the Jobs Act. Therefore, the proposed text at FAR 19.301-2(b)(4) remains in the final rule, though it has been renumbered as 19.301-2(b)(2).

10. Rule of Two Is Inconsistent Across Small Business Programs

Comment: One respondent commented that the proposed rule is inconsistent regarding when a total set-aside, partial set-aside, or reserve is appropriate. Specifically, the respondent commented that FAR 19.502-2(a), 19.502-3(a)(4), 19.502-4(a)(4), and 19.503 in the proposed rule each referred to the "rule of two" using different terminology (e.g., "fair market price", "quality", "delivery"). The respondent recommended that the "rule of two" be referenced consistently across total set-asides, partial set-asides, and reserves.

Response: The Councils reviewed the proposed language that was identified by the respondent as inconsistent and have amended the final rule at FAR 19.502-3(a)(4), 19.502-4(a)(4), and 19.503(a)(1) such that it is congruent with the "rule of two" terminology used at FAR 19.502-2(a), which most closely matches the "rule of two" in the Small Business Act (15 U.S.C. 644(j)(1)).

11. Small Disadvantaged Business Set-Asides

Comment: One respondent asked if the rule will address small disadvantaged business set-asides.

Response: The rule will not address small disadvantaged business set asides. The Councils note that the FAR rule is consistent with SBA's regulation, which does not include a small disadvantaged business set-aside program. All small businesses who participate in SBA's 8(a) Business Development (BD) program are small disadvantaged businesses. Set-asides and reserves under the 8(a) BD program are addressed in this rule.

12. Technical Edits

a. Baseline Edits

Comment: One respondent suggested revising the text at FAR 19.804-6 to include updates made in FAC 2005-95, which was published January 13, 2017 at 82 FR 4708.

Response: This final rule has been updated to include all recently published changes to the FAR.

b. Conforming Edits

Comment: One respondent pointed out that the provision at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, was not changed to conform with changes made to the provision at FAR 52.219-1, Small Business Program Representations. The respondent recommended the Councils make conforming changes to FAR 52.212-3.

Response: The Councils agree that conforming changes are needed. Therefore, in the final rule, the provision at FAR 52.212-3 has been revised to allow for the use of multiple NAICS codes.

c. Edits Regarding Full and Open Multiple-Award Contracts

Comment: One respondent suggested removing references to 8.405-5 and 16.505(b)(2)(i)(F) throughout the text and replacing them with the phrase "full and open multiple-award contract." The respondent considered this revision to be necessary because the proposed language assumed every multiple-award contract awarded under FAR subpart 16.5 and FAR part 38 would be awarded on a full and open basis.

Response: The Councils reviewed the areas of the rule identified by the respondent and found no evidence of an assumption that every multiple-award contract awarded under FAR subpart 16.5 and FAR part 38 would be awarded on a full and open basis. Therefore, the suggested revisions have not been included in the final rule.

d. Revision to Definition of "HUBZone order"

Comment: One respondent suggested a revision to the proposed definition of "HUBZone order" at FAR 2.101 to remove the phrase, "which had been awarded under full and open competition." The respondent suggested the revision because a multiple-award contract can be set aside for small business at the contract level and can be awarded to small businesses that may also meet the requirements for various socioeconomic programs, including the HUBZone Program. The respondent

requested clarification regarding whether the FAR Council intended to disallow set-asides of orders under such contracts for the HUBZone Program or other socioeconomic programs.

Response: The Councils have determined that a definition of "HUBZone order" is unnecessary for this rule and have deleted all use of the term "HUBZone order" from the rule.

e. Edit to FAR Subpart 16.5

Comment: One respondent commented that the proposed rule changes the dollar value in the heading of FAR 16.505(b)(6) from "\$5.5 million" to "\$5 million." The respondent pointed out that there is no corresponding change to the text of FAR 16.505(b)(6). This paragraph instructs contracting officers to notify unsuccessful awardees when an order exceeds \$5.5 million.

Response: The Councils did not intend to change the dollar value in the heading of FAR 16.505(b)(6). This inadvertent change has been corrected in the final rule.

f. Edit Regarding Contracting Officer Discretion

Comment: One respondent suggested adding the phrase "at their discretion" after "contracting officers may" at FAR 19.502-4(a). The rationale was that the phrase appears in the statute and in FAR 19.503.

Response: The Councils have adopted the respondent's recommendation at 19.502-4(a) where the text cites section 1331. However, for the clause at 52.219-32, the Councils have removed "at his or her discretion" since there is no reference to section 1331 and the FAR already uses the word "may" to indicate a discretionary action, i.e., an action that contracting officers have the discretion to perform or not perform.

13. Federal Data Systems Concerns

Comment: Two respondents voiced concerns with potential delays to the implementation of the rule due to necessary system upgrades to Federal data systems (e.g., Federal Procurement Data System (FPDS) and FedBizOpps (FBO)).

Response: The only portion of the rule that is not expected to be implemented in time for publication of the rule is the requirement associated with assigning multiple NAICS codes to some multiple-award contracts. As a result, the rule has been revised to reflect that the requirement to assign multiple NAICS codes will apply after October 1, 2022, which is when the Councils expect a Governmentwide system solution to capture and reflect this information.

14. Requiring Documentation for Partial Set-Aside

Comment: One respondent recommended making it clear that the contracting officer must document the rationale for any part of a multiple-award contract that is not partially set aside or for any awards not reserved for small businesses. The respondent asserts that a literal reading of FAR 19.506(a)(2) could result in the interpretation that, as long as any part of a multiple-award contract is partially set-aside, no such documentation requirement exists for the remaining non-set aside parts of that contract.

Response: The Councils reviewed the area of the rule identified by the respondent and made a clarification at 19.506(a)(1). When a contract is not totally set aside for small business in accordance with 19.502–2, documentation of the rationale is required.

C. Other Changes

This final rule contains editorial changes in order to (1) ensure the rule reflects revisions to the current version of the FAR; (2) provide greater clarity; and (3) conform to the significant changes made in the final rule. These changes include removal of the obsolete term “performance of work requirements,” clarification that “orders” refers to “task and delivery” orders, deletion of a paragraph in section 19.501, as well as relocation of text within a section.

III. Applicability to Acquisitions not Greater Than the Simplified Acquisition Threshold, Commercial Items, and Commercially Available Off-the-Shelf Items

The Federal Acquisition Regulatory Council has made determinations, in accordance with 41 U.S.C. 1905 and 41 U.S.C. 1906, that the rule will apply to acquisitions at or below the simplified acquisition threshold (SAT) and acquisitions of commercial items. Discussion of these determinations is set forth below.

The rule will also apply to acquisitions for commercially available off-the-shelf (COTS) items. As explained below, no determination is necessary by the FAR Council in connection with applicability to COTS items, because 41 U.S.C. 1907 requires that a law be applied to the acquisition of COTS items if the law concerns authorities or responsibilities under 15 U.S.C. 644 (in the Small Business Act). The statute being implemented in this final rule involved a change to 15 U.S.C. 644.

A. Applicability to Contracts at or Below the SAT

41 U.S.C. 1905 governs the applicability of laws to contracts at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making contracts at or below the SAT, but provides that such contracts will not be exempt from a provision of law if—

- The law contains criminal or civil penalties,
- The law specifically refers to 41 U.S.C. 1905 and states that the law applies to contracts and subcontracts in amounts not greater than the SAT, or
- The Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

Section 1331 of the Jobs Act is silent on the applicability of the requirements set forth above to contracts at or below the SAT and does not provide for criminal or civil penalties. Therefore, under 41 U.S.C. 1905, section 1331 does not apply to contracts at or below the SAT unless the FAR Council makes a written determination that such application is in the best interest of the Federal Government.

The FAR Council has made a determination that applicability of the final rule to contracts not greater than the SAT is in the best interest of the Government for the following reasons. Contracts not greater than the SAT are often well suited for performance by small businesses. While few, if any, multiple-award contracts are likely to be in values at or below the SAT, a very significant portion of orders made under multiple-award contracts could fall at or below the SAT. In addition, as a result of current legal and regulatory requirements applicable to contracts other than multiple-award contracts that call for work at or below the SAT to be set aside for small businesses, most agency practices are already geared towards taking advantage of this important tool in connection with small dollar purchases to maximize small business participation.

B. Applicability to Contracts for the Acquisition of Commercial Items

41 U.S.C. 1906 governs the applicability of laws to the acquisition of commercial items (other than COTS items). Section 1906 generally limits the applicability of new laws when agencies are acquiring commercial items, but provides that such acquisitions will not be exempt from a provision of law if—

- The law contains criminal or civil penalties;
- The law specifically refers to 41 U.S.C. 1906 and states that the law applies to the acquisition of commercial items; or
- The FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt the acquisition of commercial items from the provision of law.

Section 1331 of the Jobs Act is silent on the applicability of its requirements to contracts for commercial items and does not provide for criminal or civil penalties. Therefore, under 41 U.S.C. 1906, section 1331 does not apply to acquisitions for commercial items unless the FAR Council makes a written determination that such application is in the best interest of the Federal Government.

In making its determination of whether application of section 1331 to commercial items is in the best interest of the Federal Government, the FAR Council considered the following factors: (i) The benefits of the policy in furthering Administration goals, (ii) the extent to which the benefits of the policy would be reduced if an exemption is provided for commercial items, and (iii) the burden on contractors if the policy is applied to acquisitions for commercial items.

With respect to the first factor, this Administration has recognized the important nexus between maximizing small business participation in Federal contracting and having effective tools to promote such participation under multiple-award contracts, including the Federal Supply Schedules, through which a significant portion of Federal contract spending flows. The Interagency Task Force on Small Business Contracting, created in 2010 to identify meaningful ways to strengthen small business contracting, recommended that rules on set-asides for multiple-award contracts be clarified. In support of its recommendation, the Task Force noted that set-asides accounted for a substantial portion of all small business contract awards 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”. Shortly after the Task Force released its recommendations, the Jobs Act was enacted to protect the interests of small businesses and expand their opportunities in the Federal marketplace. In addition, as explained

in the Background section of this notice, DoD, GSA, and NASA published an interim rule, with SBA's concurrence, to provide general guidance ahead of SBA providing more specific guidance in its regulations. This action allowed agencies to begin taking advantage of these impactful tools instead of being required to wait until more detailed changes were promulgated. In short, the FAR Council believes these tools provide an important benefit in helping agencies to carry out the purposes of the Small Business Act and in helping the Government meet its small business contracting goals.

With respect to the second factor (the impact of excluding commercial item acquisitions on the overall benefits of the underlying policy), the FAR Council thinks, based on an analysis of FPDS data, that a significant amount of spending on new contracts is for commercial item acquisitions and a substantial amount of these activities (including all the transactions through the Federal Supply Schedules) are for commercial items, many of which can be performed by small businesses. Denying agencies the ability to apply the authorities in section 1331 to commercial item acquisitions could result in many missed opportunities for capable small business contractors seeking work in the Federal marketplace. For these reasons, the FAR Council believes exclusion could have a material negative impact.

With respect to the third factor, burden on contractors selling commercial items, there are no specific systems costs imposed by the rule and reporting costs are minimal (see discussion on the Paperwork Reduction Act under section VI).

Accordingly, for the reasons set forth above, the FAR Council has made a determination that it is in the best interest of the Government to apply section 1331 to commercial item acquisitions.

C. Applicability to Contracts for the Acquisition of COTS Items

41 U.S.C. 1907 governs the applicability of laws to the acquisition of COTS items. Section 1907 generally limits the applicability of new laws when agencies are acquiring COTS items, but provides that such acquisitions will not be exempt from a provision of law if—

- The law contains criminal or civil penalties;
- The law specifically refers to 41 U.S.C. 1907 and states that the law applies to the acquisition of COTS items;

- The law concerns authorities or responsibilities under 15 U.S.C. 644 (in the Small Business Act) or bid procedures; or

- The Administrator for Federal Procurement Policy makes a written determination that it is not in the best interest of the Federal Government to exempt the acquisition of COTS items from the provision of law.

Section 1331 amends section 15 of the Small Business Act (15 U.S.C. 644) to address the use of partial set-asides, order set-asides, and reserves under multiple-award contracts. For this reason, the rule applies to acquisitions of COTS items.

IV. Expected Impact of the Rule

This final rule is expected to benefit small business by providing contracting officers with additional guidance on tools with which to encourage small business participation in multiple-award contracts. Multiple-award contracts are commonly used in Federal procurement due to their inherent flexibility, competitive nature, and administrative efficiency. They have proven to be an effective means of contracting for large quantities of supplies and services for which the quantity and delivery requirements cannot be precisely determined at contract award. While the authority to use the tools described below has been in the FAR for several years, there was minimal guidance available for contracting officers on how to use the tools. This rule provides more guidance for contracting officers on how to—

1. Set aside part or parts of multiple-award contracts for small business;
2. Set aside orders under multiple-award contracts, notwithstanding the statutory requirement to provide contract holders fair opportunity to be considered; and
3. Reserve one or more awards for small business on multiple-award contracts that are established through full and open competition (*i.e.*, not totally or partially set aside).

The use of reserves is expected to increase opportunities for small business. Reserves allow small business concerns to have a “seat at the table” for multiple-award contracts in the absence of other acquisition strategies (*e.g.*, total or partial set-asides) that would have guaranteed opportunity for small business concerns.

In addition, this rule is expected to benefit small business by removing the current requirement for small business offerors to submit an offer for both the set-aside and non-set-aside portions of a partial set-aside. That requirement was burdensome for small business concerns

looking to perform only the set-aside portion(s). This final rule allows small business offerors to submit an offer for only the set-aside portion if they are only interested in performing that portion. By allowing small business offerors to only submit an offer for the set-aside portion, the Government is expected to have fewer proposals to evaluate for the non-set-aside portion of the solicitation, which would result in a reduction in burden. However, there may be additional proposals received on the set-aside portion of the solicitation from offerors that previously did not submit a proposal for the requirement because they would have had to submit a proposal for all portions of the solicitation.

When awarding task or delivery orders, contracting officers currently rely on a contractor's representation of size and socioeconomic status for the multiple-award contract. This rule gives contracting officers discretion to require rerepresentation of business size or socioeconomic status for an order under a multiple-award contract. There are costs involved when a small business concern is required to represent its small business size or socioeconomic status. However, rerepresentation for orders is expected to help ensure those orders are awarded to businesses that have the required size or socioeconomic status.

Other impacts of this final rule include the following:

- The rule provides contracting officers with the authority to issue orders directly to a small business under a reserve, which will increase opportunities for small business concerns awarded a contract under a multiple-award contract reserve but will result in lost opportunity for the other contractors with awards on the multiple-award contract.

- This rule removes the ability of interested parties to protest sole source awards under the service-disabled veteran-owned small business program. There is a potential lost benefit to the interested parties who lose the ability to protest, but there are benefits to the contractors who win these awards as they will no longer be required to expend resources defending challenges to the award.

- Currently contracting officers assign only one North American Industry Classification System (NAICS) code to a multiple-award contract. This rule requires certain multiple-award contracts to be assigned more than one NAICS code. Some contractors may qualify as small under the size standards associated with one or more of the NAICS codes assigned to a

particular contract and also may qualify as other than small for other NAICS codes assigned to the same contract. Therefore, some contractors may need to negotiate and manage a small business subcontracting plan either for the portion of a multiple-award contract for which they are other than small, or for the entirety of the contract, at the contractor's discretion, while other contractors may no longer require a subcontracting plan because the value of the portion of the contract for which they are other than small is too small to require a subcontracting plan.

- Contracting officers currently verify compliance with the limitations on subcontracting at the contract level for multiple-award contracts that are set aside for a small business program. This rule requires contracting officers to specify the compliance period for the limitations on subcontracting at either the contract or order level. There is no data from which to estimate the number of contracts that would require compliance at the order level. Additionally it is unclear whether compliance at the contract level or the order level would benefit or burden industry. Public comments in response to SBA's proposed rule indicated small businesses did not support compliance at the order level because it is not always possible for every order and could reduce competition for orders that required compliance at the order level.

- This rule prohibits tiered evaluation of offers on multiple-award contracts unless the agency has statutory authority. Tiered evaluations allow the Government to evaluate offers at each tier (e.g., service-disabled veteran-owned small business) and only evaluate offers at the next tier (e.g., small business) if an award cannot be made at the previous tier; it reduces the number of offers that must be evaluated. There is no data available on the number of times contracting officers use tiered evaluations annually or whether these contracting officers are at agencies that have statutory authority to conduct tiered evaluations. Therefore, this change probably will result in an increased burden to the Government.

These changes drive both costs and savings that are the result of the implementation of SBA's final rule in the FAR. Therefore, these costs and savings are attributable to the SBA final rule. The impacts of this final FAR rule that are attributable to the FAR are no more than de minimis. To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at www.regulations.gov, search for "FAR Case 2014-002," click "Open

Docket," and view "Supporting Documents."

V. 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.

VI. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771 because this rule results in no more than de minimis costs.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule amends the FAR to provide uniform guidance consistent with SBA's final rule at 78 FR 61114, published on October 2, 2013, which implements section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)). The objective of this rule is to provide regulatory guidance under which Federal agencies may—

- (1) Set aside part or parts of multiple-award contracts for small business;
- (2) Reserve one or more awards for small businesses on multiple-award contracts that are established through full and open competition; and
- (3) Set aside orders under multiple-award contracts, notwithstanding the fair opportunity requirements.

The rule seeks to ensure the increased consideration of small businesses in connection with the establishment and use of multiple-award contracts. This rule provides a balance between the benefits associated with multiple-award contracts and maximizing opportunities for small businesses.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the proposed rule.

This rule may have a positive economic impact on any small business entity that wishes to participate in the Federal procurement arena. By providing clarification and additional guidance on the use of the section 1331 authorities, small

businesses are expected to have greater access to multiple-award contracts, including orders issued against such contracts.

Analysis of the System for Award Management (SAM) indicates there are over 338,327 small business registrants that can potentially benefit from the implementation of this rule.

This rule contains an information collection requirement. Contracting officers may, at their discretion, require contractors under a multiple-award contract to rerepresent their size and socioeconomic status on individual task or delivery orders. The reporting burden associated with OMB Control Number 9000-0163 was increased by 885 hours to account for this rule's information collection requirement. The burden calculations estimated that 590 small business contractors would be required to rerepresent their size and status on orders annually.

This rule does not impose any new recordkeeping or other compliance requirements.

This rule is not expected to have a negative impact on any small business entity.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of SBA.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains an information collection requirement. OMB has cleared this information collection requirement under OMB Control Number 9000-0163, titled: Small Business Size Rerepresentation, in the amount of 1,985 burden hours. No comments were received on the information collection requirement that was provided in the proposed rule; however, due to the use of more current data to calculate the burden, revisions were made to the burden estimate associated with the collection. The burden hours for 9000-0163 include both existing information collection requirements associated with rerepresentations, as well as the new information collection requirement in this rule.

List of Subjects in 48 CFR Parts 2, 4, 7, 8, 9, 10, 13, 15, 16, 19, 42, and 52

Government procurement.

William F. Clark,

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

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 8, 12, 16, 19, 38, and 52, which was published in the **Federal Register** at 76 FR 68032 on

November 2, 2011, is adopted as final with the following changes:

- 1. The authority citation for 48 CFR parts 2, 4, 7, 8, 9, 10, 13, 15, 16, 19, 42 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 in paragraph (b)(2) by adding paragraph (4) to the definition “HUBZone contract” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

HUBZone contract * * *

(4) Awards based on a reserve for HUBZone small business concerns in a solicitation for a multiple-award contract.

* * * * *

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.803 [Amended]

- 3. Amend section 4.803 in paragraph (a)(6) by removing “decision” and adding “decision (see 19.506)” in its place.
- 4. Amend section 4.1202 by revising paragraphs (a) introductory text and (a)(14) to read as follows:

4.1202 Solicitation provision and contract clause.

(a) Insert the provision at 52.204–8, Annual Representations and Certifications, in solicitations, except for commercial item solicitations issued under FAR part 12. The contracting officer shall check the applicable provisions at 52.204–8(c)(2). Use the provision with its Alternate I in solicitations issued after October 1, 2022, that will result in a multiple-award contract with more than one North American Industry Classification System code assigned (see 19.102(b)). When the provision at 52.204–7, System for Award Management, is included in the solicitation, do not separately include the following representations and certifications:

* * * * *

(14) 52.219–1, Small Business Program Representations (Basic, Alternates I, and II).

* * * * *

PART 7—ACQUISITION PLANNING

7.104 [Amended]

- 5. Amend section 7.104 by removing from the first sentence of paragraph (d) “entirely reserved or” and adding “totally” in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404 [Amended]

- 6. Amend section 8.404 in the first sentence in paragraph (a) by removing “requirement at 19.202–1(e)(1)(iii)” and adding “requirements at 19.102(b)(3) and 19.202–1(e)(1)(iii)” in its place.
- 7. Amend section 8.405–5 in the first sentence of paragraph (b) by removing “against” and adding “under” in its place and revising the second and last sentences.

The revisions read as follows:

8.405–5 Small business.

* * * * *

(b) * * * 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 North American Industry Classification System code assigned to the order in accordance with 19.102(b)(3). Ordering activities should rely on the small business representations made by schedule contractors at the contract level (but see section 19.301–2(b)(2) concerning rerepresentation for an order).

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

- 8. Amend section 9.104–3 by revising paragraph (d)(2) to read as follows:

9.104–3 Application of standards.

* * * * *

(d) * * *

(2) A small business that is unable to comply with the limitations on subcontracting may be considered nonresponsive (see 52.219–3, Notice of HUBZone Set-Aside or Sole Source Award; 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns; 52.219–14, Limitations on Subcontracting; 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside; 52.219–29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns; and 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). A small business that has not agreed to comply with the limitations on subcontracting may be considered nonresponsive.

PART 10—MARKET RESEARCH

- 9. Amend section 10.001 by—
 - a. Removing from paragraph (a)(3)(vii) “and”;
 - b. Redesignating paragraph (a)(3)(viii) as paragraph (a)(3)(ix);
 - c. Adding new paragraph (a)(3)(viii); and
 - d. Removing from newly designated paragraph (a)(3)(ix) “Subpart 39.2” and adding “subpart 39.2” in its place.
 The addition reads as follows:

10.001 Policy.

(a) * * *

(3) * * *

(viii) Determine whether the acquisition should utilize any of the small business programs in accordance with part 19; and

* * * * *

- 10. Amend section 10.002 by revising paragraph (b)(1)(vii) and adding paragraph (b)(2)(ix) to read as follows:

10.002 Procedures.

* * * * *

(b) * * *

(1) * * *

(vii) Whether the Government’s needs can be met by small business concerns that will likely submit a competitive offer at fair market prices (see part 19).

(2) * * *

(ix) Reviewing systems such as the System for Award Management, the Federal Procurement Data System, and the Small Business Administration’s Dynamic Small Business Search.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.003 [Amended]

- 11. Amend section 13.003 in paragraph (b)(1) by removing “are reserved exclusively for small business concerns and” and by removing “shall be set aside” and adding in its place “shall be set aside for small business concerns”.

PART 15—CONTRACTING BY NEGOTIATION

15.101–3 [Added]

- 12. Add section 15.101–3 to read as follows:

15.101–3 Tiered evaluation of small business offers.

An agency shall not create a tiered (or “cascading”) evaluation of offers, as

described in 13 CFR 125.2, for multiple-award contracts unless an agency has statutory authority.

PART 16—TYPES OF CONTRACTS

■ 13. Amend section 16.500 by adding paragraph (e) to read as follows:

16.500 Scope of subpart.

* * * * *

(e) See subpart 19.5 for procedures to set aside part or parts of multiple-award contracts for small businesses; to reserve one or more awards for small business on multiple-award contracts; and to set aside orders for small businesses under multiple-award contracts.

■ 14. Amend section 16.505 by—

■ a. Adding paragraphs (a)(7)(ix) and (a)(10)(iii);

■ b. Revising paragraphs (b)(1)(i) and (b)(4);

■ c. Adding a paragraph (b)(5) subject heading;

■ d. Revising the paragraph (b)(6) subject heading; and

■ e. Adding paragraph (b)(9).

The revisions and additions read as follows:

16.505 Ordering.

(a) * * *

(7) * * *

(ix) North American Industry Classification System code (see 19.102(b)(3)).

* * * * *

(10) * * *

(iii) For protests of small business size status for set-aside orders, see 19.302.

* * * * *

(b) * * *

(1) * * *

(i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$3,500 issued under multiple delivery-order contracts or multiple task-order contracts, except—

(A) As provided for in paragraph (b)(2) of this section; or

(B) Orders issued under 19.504(c)(1)(ii).

* * * * *

(4) *Cost reimbursement orders.* For additional requirements for cost-reimbursement orders, see 16.301–3.

(5) *Time-and-materials or labor-hour orders.* * * *

(6) *Postaward notices and debriefing of awardees for orders exceeding \$5.5 million.* * * *

* * * * *

(9) *Small business.* The contracting officer should rely on the small business representations at the contract level (but see section 19.301–2(b)(2) for order rerepresentations).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 15. Amend section 19.000 by—

■ a. Removing from paragraph (a)(3) “aside” and adding “aside, in total or in part,” in its place;

■ b. Removing from paragraph (a)(8) “and”;

■ c. Removing the period at the end of paragraph (a)(9) and adding “; and” in its place; and

■ d. Adding paragraph (a)(10).

The addition reads as follows:

19.000 Scope of part.

(a) * * *

(10) The use of reserves.

* * * * *

■ 16. Amend section 19.001 by

removing the definition “Nonmanufacturer rule” and adding in alphabetical order a definition for “Nonmanufacturer”.

The addition reads as follows:

19.001 Definitions.

* * * * *

Nonmanufacturer means a concern that furnishes a product it did not manufacture or produce (see 13 CFR 121.406).

■ 17. Revise section 19.102 to read as follows:

19.102 Small business size standards and North American Industry Classification System codes.

(a) *Locating size standards and North American Industry Classification System codes.* (1) SBA establishes small business size standards on an industry-by-industry basis. Small business size standards and corresponding North American Industry Classification System (NAICS) codes are provided at 13 CFR 121.201. They are also available at <https://www.sba.gov/content/table-small-business-size-standards>.

(2) NAICS codes are updated by the Office of Management and Budget through its Economic Classification Policy Committee every five years. New NAICS codes are not available for use in Federal contracting until SBA publishes corresponding size standards. NAICS codes are available from the U.S. Census Bureau at <https://www.census.gov/eos/www/naics/>.

(b) *Determining the appropriate NAICS codes for the solicitation.* (1) Unless required to do otherwise by paragraph (b)(2)(ii)(B) of this section, contracting officers shall assign one NAICS code and corresponding size standard to all solicitations, contracts, and task and delivery orders. The contracting officer shall determine the appropriate NAICS code by classifying

the product or service being acquired in the one industry that best describes the principal purpose of the supply or service being acquired. Primary consideration is given to the industry descriptions in the U.S. NAICS Manual, the product or service descriptions in the solicitation, the relative value and importance of the components of the requirement making up the end item being procured, and the function of the goods or services being purchased. A procurement is usually classified according to the component that accounts for the greatest percentage of contract value.

(2)(i) For solicitations issued on or before October 1, 2022, that will result in multiple-award contracts, the contracting officer shall assign a NAICS code in accordance with paragraph (b)(1) of this section.

(ii) For solicitations issued after October 1, 2022, that will result in multiple-award contracts, the contracting officer shall—

(A) Assign a single NAICS code (and corresponding size standard) that best describes the principal purpose of both the acquisition and each subsequent order; or

(B) Divide the acquisition into distinct portions or categories (e.g., line item numbers, Special Item Numbers, sectors, functional areas, or equivalent) and assign each portion or category a single NAICS code and size standard that best describes the principal purpose of the supplies or services to be acquired under that distinct portion or category.

(3)(i) When placing orders under multiple-award contracts with a single NAICS code, the contracting officer shall assign the order the same NAICS code and corresponding size standard designated in the contract.

(ii) When placing orders under multiple-award contracts with more than one NAICS code, the contracting officer shall assign the order the NAICS code and corresponding size standard designated in the contract for the distinct portion or category against which the order is placed. If an order covers multiple portions or categories, select the NAICS code and corresponding size standard designated in the contract for the distinct portion or category that best represents the principal purpose of the order.

(4) The contracting officer's designation is final unless appealed in accordance with the procedures in 19.103.

(c) *Application of small business size standards to solicitations.* (1) The contracting officer shall apply the size

standard in effect on the date the solicitation is issued.

(2) The contracting officer may amend the solicitation and use the new size standard if SBA amends the size standard and it becomes effective before the due date for receipt of initial offers.

■ 18. Add section 19.103 to subpart 19.1 to read as follows:

19.103 Appealing the contracting officer's North American Industry Classification System code and size standard determination.

(a) The contracting officer's determination is final unless appealed as follows:

(1) An appeal of a contracting officer's NAICS code designation and the applicable size standard shall be served and filed within 10 calendar days after the issuance of the initial solicitation or any amendment affecting the NAICS code or size standard. However, SBA may file a NAICS code appeal at any time before offers are due.

(2) Appeals of a contracting officer's NAICS code designation or applicable size standard may be filed with SBA's Office of Hearings and Appeals (OHA) by—

(i) Any person adversely affected by a NAICS code designation or applicable size standard. However, with respect to a particular sole source 8(a) contract, only the SBA Associate Administrator for Business Development may appeal a NAICS code designation; or

(ii) The Associate or Assistant Director for the SBA program involved, through SBA's Office of General Counsel.

(3) Contracting officers shall advise the public, by amendment to the solicitation, of the existence of a NAICS code appeal (see 5.102(a)(1)). Such notices shall include the procedures and the deadline for interested parties to file and serve arguments concerning the appeal.

(4) SBA's OHA will dismiss summarily an untimely NAICS code appeal.

(5) NAICS code appeals are filed in accordance with 13 CFR 121.1103.

(6) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and the Administrative Judge assigned to the case. The contracting officer's response to the appeal, if any, shall include argument and evidence (see 13 CFR part 134), and shall be received by OHA within 15 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice

and order, the contracting officer shall withhold award, unless withholding award is not in the best interests of the Government, and immediately send to OHA an electronic link to or a paper copy of both the original solicitation and all amendments relating to the NAICS code appeal. The contracting officer shall inform OHA of any amendments, actions, or developments concerning the procurement in question.

(7) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation shall be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

(b) SBA's regulations concerning appeals of NAICS code designations are located at 13 CFR 121.1102 to 121.1103 and 13 CFR part 134.

■ 19. Amend section 19.201 by—

■ a. Revising the second sentence of paragraph (c) introductory text;

■ b. Removing from paragraph (c)(1) "Director of" and adding "Director of the Office of" in its place, in two places; and

■ c. Revising paragraphs (c)(3) and (5) and (d).

The revisions read as follows:

19.201 General policy.

* * * * *

(c) * * * For the Department of Defense, in accordance with section 904 of Public Law 109-163 (10 U.S.C. 144 note), the Office of Small and Disadvantaged Business Utilization has been redesignated as the Office of Small Business Programs.

* * * * *

(3) Is responsible to and reports directly to the agency head or the deputy to the agency head (except that for the Department of Defense, the Director of the Office of Small Business Programs reports to the Secretary or the Secretary's designee);

* * * * *

(5) Works with the SBA procurement center representative (PCR) (or, if a PCR is not assigned, see 19.402(a)) to identify proposed solicitations that involve bundling and work with the agency acquisition officials and SBA to revise the acquisition strategies for such proposed solicitations to increase the probability of participation by small businesses;

* * * * *

(d) Small business specialists shall be appointed and act in accordance with agency regulations.

(1) The contracting activity shall coordinate with the small business specialist as early in the acquisition planning process as practicable, but no later than 30 days before the issuance of a solicitation, or prior to placing an order without a solicitation when the acquisition meets the dollar thresholds set forth at 7.107-4(a)(1). See also 7.104(d).

(2) The small business specialist shall notify the agency's Director of the Office of Small and Disadvantaged Business Utilization, and for the Department of Defense, the Director of the Office of Small Business Programs, when the criteria relating to substantial bundling at 7.107-4(a)(1) are met.

(3) The small business specialist shall coordinate with the contracting activity and the SBA PCR on all determinations and findings required by 7.107 for consolidation or bundling of contract requirements.

■ 20. Revise section 19.202 to read as follows:

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed in this section and shall consider recommendations of the agency Director of the Office of Small and Disadvantaged Business Utilization, or for the Department of Defense, the Director of the Office of Small Business Programs, or the Director's designee, as to whether a particular acquisition should be awarded under subpart 19.5, 19.8, 19.13, 19.14, or 19.15. Agencies shall establish procedures including dollar thresholds for review of acquisitions by the Director or the Director's designee for the purpose of making these recommendations. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted, in accordance with 19.506.

■ 21. Amend section 19.202-1 by revising paragraphs (e)(1) introductory text and (e)(4) to read as follows:

19.202-1 Encouraging small business participation in acquisitions.

* * * * *

(e)(1) Provide a copy of the proposed acquisition package and other reasonably obtainable information related to the acquisition to the SBA PCR (or, if a PCR is not assigned, see 19.402(a)) at least 30 days prior to the issuance of the solicitation if—

* * * * *

(4) If the contracting officer rejects the SBA PCR's recommendation made in accordance with 19.402(c)(2), document the basis for the rejection and notify the SBA PCR in accordance with 19.502–8.

■ 22. Amend section 19.202–2 by removing from the introductory paragraph “must” and adding “shall” in its place and revising paragraph (a).

The revision reads as follows:

19.202–2 Locating small business sources.

* * * * *

(a) Before issuing solicitations, make every reasonable effort to find additional small business concerns (see 10.002(b)(2)). This effort should include contacting the agency small business specialist and SBA PCR (or, if a PCR is not assigned, see 19.402(a)).

* * * * *

19.202–4 [Amended]

■ 23. Amend section 19.202–4 in the introductory text by removing “must” and adding “shall” in its place; and in paragraph (c) by removing “bid sets and specifications” and adding “solicitations” in its place.

■ 24. Amend section 19.202–5 in the introductory text by removing “must” and adding “shall” in its place and by revising paragraph (c)(1).

The revision reads as follows:

19.202–5 Data collection and reporting requirements.

* * * * *

(c) * * *

(1) Require a contractor that represented itself as any of the small business concerns identified in 19.000(a)(3) prior to award of the contract to rerepresent its size and socioeconomic status (*i.e.*, 8(a), small disadvantaged business, HUBZone small business, service-disabled veteran-owned small business, EDWOSB, or WOSB status); and

* * * * *

19.202–6 [Amended]

■ 25. Amend section 19.202–6 in paragraph (a)(1) by removing “set-asides” and adding “set-asides, and reserves” in its place.

19.203 [Amended]

■ 26. Amend section 19.203 in paragraph (b) by removing “exclusively reserve” and adding “set aside” in its place.

Subpart 19.3—Determination of Small Business Size and Status for Small Business Programs

■ 27. Revise the heading for subpart 19.3 to read as set forth above.

■ 28. Amend section 19.301–1 by—

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b) through (d) as paragraphs (f) through (h); and

■ c. Adding new paragraphs (b) through (d) and paragraph (e).

The revision and additions read as follows:

19.301–1 Representation by the offeror.

(a) To be eligible for award as a small business concern identified in 19.000(a)(3), an offeror is required to represent in good faith—

(1)(i) That it meets the small business size standard corresponding to the North American Industry Classification System (NAICS) code identified in the solicitation; or

(ii) For a multiple-award contract where there is more than one NAICS code assigned, that it meets the small business size standard for each distinct portion or category (*e.g.*, line item numbers, Special Item Numbers (SINs), sectors, functional areas, or the equivalent) for which it submits an offer. If the small business concern submits an offer for the entire multiple-award contract, it must meet the size standard for each distinct portion or category (*e.g.*, line item number, SIN, sector, functional area, or equivalent); and

(2) The Small Business Administration (SBA) has not issued a written determination stating otherwise pursuant to 13 CFR 121.1009.

(b) An offeror is required to represent its size and socioeconomic status in writing to the contracting officer at the time of initial offer, including offers for—

(1) Basic ordering agreements (see 16.703); and

(2) Blanket purchase agreements (BPAs) issued pursuant to part 13.

(c) To be eligible for an award of an order under a basic ordering agreement or a BPA issued pursuant to part 13 as a small business concern identified in 19.000(a)(3), the offeror must be a small business concern identified in 19.000(a)(3) at the time of award of the order.

(d) To be eligible for an award under the HUBZone Program (see subpart 19.13), a HUBZone small business concern must be a HUBZone small business concern both at the time of initial offer and at the time of contract award.

(e) Multiple-award contract representations:

(1) A business that represents as a small business concern at the time of its initial offer for the contract is considered a small business concern for each order issued under the contract (but see 19.301–2 for rerepresentations).

(2) A business that represents as a small business concern at the time of its initial offer for a distinct portion or category as set forth in paragraph (a)(1)(ii) is considered a small business concern for each order issued under that distinct portion or category (but see 19.301–2 for rerepresentations).

* * * * *

■ 29. Amend section 19.301–2 by revising paragraphs (b), (c), and (d) to read as follows:

19.301–2 Rerepresentation by a contractor that represented itself as a small business concern.

* * * * *

(b) A contractor that represented itself as any of the small business concerns identified in 19.000(a)(3) before contract award is required to rerepresent its size and socioeconomic status—

(1) For the NAICS code(s) in the contract—

(i) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, if the novation agreement was executed prior to inclusion of this clause in the contract;

(ii) Within 30 days after a merger or acquisition (whether the contractor acquires or is acquired by another company) of the contractor that does not require novation or within 30 days after modification of the contract to include the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, if the merger or acquisition occurred prior to inclusion of this clause in the contract;

(iii) For long-term contracts—

(A) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(B) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter; or

(2) For the NAICS code assigned to an order under a multiple-award contract, if the contracting officer requires contractors to rerepresent their size and socioeconomic status for that order.

(c) A contractor is required to rerepresent its size status in accordance with the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code that was initially assigned to the contract. For multiple-award contracts where there is

more than one NAICS code assigned, the contractor is required to rerepresent its size status for each NAICS code assigned to the contract.

(d)(1) *Contract rerepresentation.* After a contractor rerepresents for a contract that it no longer qualifies as a small business concern identified in 19.000(a)(3) in accordance with 52.219–28, the agency may no longer include the value of options exercised, modifications issued, orders issued, or purchases made under BPAs on that contract in its small business prime contracting goal achievements. When a contractor’s rerepresentation for a contract qualifies it as a different small business concern identified in 19.000(a)(3) than what it represented for award, the agency may include the value of options exercised, modifications issued, orders issued, or purchases made under BPAs on that contract in its small business prime contracting goal achievements, consistent with the rerepresentation. Agencies should issue a modification to the contract capturing the rerepresentation and report it to FPDS within 30 days after notification of the rerepresentation.

(2) *Rerepresentation for a task or delivery order.* (i) When a contractor rerepresents for an order that it no longer qualifies as a small business concern identified in 19.000(a)(3), the agency cannot include the value of the order in its small business prime contracting goal achievements. When a contractor’s rerepresentation for an order qualifies it as a different small business concern identified in 19.000(a)(3) than what it represented for contract award, the agency can include the value of the order in its small business prime contracting goal achievement, consistent with the rerepresentation.

(ii) A rerepresentation for an order does not change the size or socioeconomic status representation for the contract.

* * * * *

■ 30. Amend section 19.302 by revising paragraphs (a) and (b) to read as follows:

19.302 Protesting a small business representation or rerepresentation.

(a)(1) The SBA regulations on small business size and size protests are found at 13 CFR part 121.

(2) An offeror, the contracting officer, SBA, or another interested party may protest the small business representation of an offeror in a specific offer for a contract. However, for competitive 8(a) contracts, the filing of a protest is limited to an offeror, the contracting officer, or the SBA.

(b) Any time after offers are received by the contracting officer, or in the case of bids, opened, the contracting officer may question the small business representation of any offeror in a specific offer by filing a contracting officer’s protest (see paragraph (c) of this section).

* * * * *

19.303 [Removed and Reserved]

■ 31. Remove and reserve section 19.303.

■ 32. Amend section 19.307 by removing and reserving paragraph (a) and revising paragraph (b)(1).

The revision reads as follows:

19.307 Protesting a firm’s status as a service-disabled veteran-owned small business concern.

* * * * *

(b)(1) For sole source acquisitions, the contracting officer or SBA may protest the apparently successful offeror’s service-disabled veteran-owned small business status. For all other acquisitions, any interested party may protest the apparently successful offeror’s service-disabled veteran-owned small business status.

* * * * *

■ 33. Amend section 19.309 by adding paragraph (a)(3) and revising paragraph (c) to read as follows:

19.309 Solicitation provisions and contract clauses.

(a) * * *

(3) Use the provision with its Alternate II in solicitations that will result in a multiple-award contract with more than one NAICS code assigned. This is authorized for solicitations issued after October 1, 2022 (see 19.102(b)).

* * * * *

(c)(1) Insert the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, in solicitations and contracts exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

(2) Use the clause with its Alternate I in solicitations and the resulting multiple-award contracts with more than one NAICS code. This is authorized for solicitations issued after October 1, 2022 (see 19.102(b)).

■ 34. Amend section 19.401 by revising paragraph (b) to read as follows:

19.401 General.

* * * * *

(b) The Director of the Office of Small and Disadvantaged Business Utilization serves as the agency focal point for

interfacing with SBA. The Director of the Office of Small Business Programs is the agency focal point for the Department of Defense.

■ 35. Amend section 19.402 by revising paragraphs (a), (b), and (c) introductory text to read as follows:

19.402 Small Business Administration procurement center representatives.

(a)(1) The SBA may assign one or more procurement center representatives (PCRs) to any contracting activity or contract administration office to carry out SBA policies and programs. Assigned SBA PCRs are required to comply with the contracting agency’s directives governing the conduct of contracting personnel and the release of contract information. The SBA must obtain for its PCRs security clearances required by the contracting agency.

(2) If an SBA PCR is not assigned to the procuring activity or contract administration office, contact the SBA Office of Government Contracting Area Office serving the area in which the procuring activity is located for assistance in carrying out SBA policies and programs. See <https://www.sba.gov/federal-contracting/counseling-help/procurement-center-representative-directory> for the location of the SBA office servicing the activity.

(b) Upon their request and subject to applicable acquisition and security regulations, contracting officers shall give SBA PCRs (or, if a PCR is not assigned, see paragraph (a) of this section) access to all reasonably obtainable contract information that is directly pertinent to their official duties.

(c) The duties assigned by SBA to its PCR are set forth at 13 CFR 125.2(b) and include but are not limited to the following:

* * * * *

19.403 [Amended]

■ 36. Amend section 19.403 in paragraph (c)(8) by removing “in 19.505” and adding “in 19.502–8” in its place.

Subpart 19.5—Small Business Total Set-Asides, Partial Set-Asides, and Reserves

■ 37. Revise the heading of subpart 19.5 to read as set forth above.

■ 38. Revise section 19.501 to read as follows:

19.501 General.

(a)(1) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A “set-aside for

small business” is the limiting of an acquisition exclusively for participation by small business concerns. A small business set-aside may be open to any of the small business concerns identified at 19.000(a)(3). A small business set-aside of a single acquisition or a class of acquisitions may be total or partial.

(2) The purpose of small business reserves is to award one or more multiple-award contracts to any of the small business concerns identified at 19.000(a)(3), under a full and open competition. A small business reserve shall not be used when the acquisition can be set aside, in total or in part.

(b) The contracting officer makes the determination to make a small business set-aside, in total or in part, or a reserve. The Small Business Administration (SBA) procurement center representative (PCR) (or, if a PCR is not assigned, see 19.402(a)) may make a recommendation to the contracting officer.

(c) The contracting officer shall review acquisitions to determine if they can be set aside, in total or in part, or reserved for small business, giving consideration to the recommendations of agency personnel in the Office of Small and Disadvantaged Business Utilization, or for the Department of Defense, in the Office of Small Business Programs. Agencies may establish threshold levels for this review depending upon their needs.

(d) At the request of an SBA PCR (or, if a PCR is not assigned, see 19.402(a)), the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative’s security clearance) all proposed acquisitions in excess of the micro-purchase threshold that have not been unilaterally set aside for small business.

(e) All solicitations involving set-asides, in total or in part, or reserves shall specify the NAICS code(s) and corresponding size standard(s) (see 19.102).

(f) Except as authorized by law, a contract may not be awarded as a result of a small business set-aside if the cost to the awarding agency exceeds the fair market price.

(g) For the applicability of the limitations on subcontracting and the nonmanufacturer rule, see 19.505.

- 39. Amend section 19.502–1 by—
- a. Removing from paragraph (a)(1) “Nations” and adding “Nation’s” in its place;
- b. Removing from paragraph (a)(2) “category”; and
- c. Revising paragraph (b).

The revision reads as follows:

19.502–1 Requirements for setting aside acquisitions.

* * * * *

(b) This requirement does not apply to purchases of \$3,500 or less (\$20,000 or less for acquisitions as described in 13.201(g)(1)), or purchases from required sources under part 8 (e.g., Committee for Purchase From People Who are Blind or Severely Disabled).

■ 40. Amend section 19.502–2 by revising paragraphs (a) and (b)(1) and (2) and removing paragraph (c).

The revisions read as follows:

19.502–2 Total small business set-asides.

(a) Before setting aside an acquisition under this paragraph, refer to 19.203(b). Each acquisition of supplies or services that has an anticipated dollar value exceeding \$3,500 (\$20,000 for acquisitions as described in 13.201(g)(1)), but not over \$150,000 (\$750,000 for acquisitions described in paragraph (1)(i) of the simplified acquisition threshold definition at 2.101), shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of fair market prices, quality, and delivery. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business set-aside does not preclude the award of a contract as described in 19.203.

(b) * * *

(1) Offers will be obtained from at least two responsible small business concerns; and

(2) Award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (see 19.502–3 for partial set-asides).

Although past acquisition history and market research of an item or similar items are always important, these are not the only factors to be considered in determining whether a reasonable expectation exists. In making research and development small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with

the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

■ 41. Revise section 19.502–3 to read as follows:

19.502–3 Partial set-asides of contracts other than multiple-award contracts.

(a) The contracting officer shall set aside a portion or portions of an acquisition, except for construction, for exclusive small business participation when—

(1) Market research indicates that a total set-aside is not appropriate (see 19.502–2);

(2) The requirement can be divided into distinct portions;

(3) The acquisition is not subject to simplified acquisition procedures;

(4) Two or more responsible small business concerns are reasonably expected to submit offers on the set-aside portion or portions of the acquisition that are competitive in terms of fair market prices, quality, and delivery;

(5) The specific program eligibility requirements identified in this part apply; and

(6) The solicitation will result in a contract other than a multiple-award contract (see 2.101 for definition of multiple-award contract).

(b) When the contracting officer determines that a requirement is to be partially set aside, the solicitation shall identify which portion or portions are set aside and not set aside.

(c) The contracting officer shall specify in the solicitation how offers shall be submitted with regard to the set-aside and non-set-aside portions.

(d) Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected on the set-aside portion of partial set-asides. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see subpart 19.3).

■ 42. Revise section 19.502–4 to read as follows:

19.502–4 Partial set-asides of multiple-award contracts.

(a) In accordance with section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)(1)), contracting officers may, at their discretion, set aside a portion or portions of a multiple-award contract, except for construction, for any of the small business concerns identified at 19.000(a)(3) when—

(1) Market research indicates that a total set-aside is not appropriate (see 19.502–2);

(2) The requirement can be divided into distinct portions;

(3) The acquisition is not subject to simplified acquisition procedures;

(4) Two or more responsible small business concerns are reasonably expected to submit an offer on the set-aside portion or portions of the acquisition that are competitive in terms of fair market prices, quality, and delivery; and

(5) The specific program eligibility requirements identified in this part apply.

(b) When the contracting officer determines that a requirement is to be partially set aside, the solicitation shall identify which portion or portions are set aside and not set aside.

(c) The contracting officer shall specify in the solicitation how offers shall be submitted with regard to the set-aside and non-set-aside portions.

(d) Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected on the set-aside portion of partial set-asides. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see subpart 19.3).

19.502-5 [Removed]

■ 43. Remove section 19.502-5.

19.502-6 [Redesignated as 19.502-5]

■ 44. Redesignate section 19.502-6 as section 19.502-5 and revise the heading to read as follows:

19.502-5 Insufficient reasons for not setting aside an acquisition.

* * * * *

19.503 thru 19.507 [Redesignated as 19.502-6 thru 19.502-10]

■ 45. Redesignate sections 19.503 through 19.507 as sections 19.502-6 through 19.502-10.

19.502-6 [Amended]

■ 46. Amend newly designated section 19.502-6 by—

- a. Removing from paragraph (c)(2) “reserved for small business concerns” and adding “set aside” in its place; and
- b. Removing from paragraph (d) “(see 19.506(a))” and the two occurrences of “procurement center representative” and adding “(see 19.502-9(a))” and “PCR” twice in their places.

■ 47. Amend newly designated section 19.502-8 by—

- a. Revising paragraph (a); and
- b. Removing from paragraph (b) the two occurrences of “procurement center representative” and adding “PCR” in

their places and removing the two occurrences of “(or designee)”.

The revision reads as follows:

19.502-8 Rejecting Small Business Administration recommendations.

(a) If the contracting officer rejects a recommendation of the SBA, written notice shall be furnished to the appropriate SBA representative within 5 working days of the contracting officer’s receipt of the recommendation.

* * * * *

■ 48. Amend newly designated section 19.502-9 by revising paragraph (a) and removing from paragraph (b) “SBA representative” and “procurement center representative” and adding “SBA PCR” and “PCR” in their places, respectively. The revision reads as follows:

19.502-9 Withdrawing or modifying small business set-asides.

(a) If, before award of a contract involving a total or partial small business set-aside, the contracting officer considers that award would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the small business set-aside, whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual total or partial small business set-aside, by giving written notice to the agency small business specialist and the SBA PCR (or, if a PCR is not assigned, see 19.402(a)) stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class small business set-aside to withdraw one or more individual acquisitions.

* * * * *

■ 49. Add new section 19.503 to read as follows:

19.503 Reserves.

(a) In accordance with section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)(3)) and 13 CFR 125.2(e)(4), contracting officers may, at their discretion 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), when market research indicates—

(1) A total set-aside is not feasible because there is no reasonable expectation of receiving offers that are competitive in terms of fair market prices, quality, and delivery from at least two responsible small business concerns identified in 19.000(a)(3), that can perform the entire requirement; and

(2) A partial set-aside is not feasible because—

(i) The contracting officer is unable to divide the requirement into distinct portions; or

(ii) There is no reasonable expectation that at least two responsible small business concerns identified in 19.000(a)(3) can perform any portion of the requirement competitively in terms of fair market price, quality, and delivery.

(b) A reserve will result in one of the following:

(1) One or more contract awards to any one or more types of small business concerns identified in 19.000(a)(3).

(2) In the case of a solicitation of a bundled requirement that will result in a multiple-award contract, an award to one or more small businesses with a Small Business Teaming Arrangement.

(c) The specific program eligibility requirements identified in this part apply.

(d) The limitations on subcontracting and the nonmanufacturer rule (see 19.505) do not apply to reserves at the contract level, but shall apply to orders that are set aside or issued directly to one small business concern under 19.504(c)(1)(ii).

■ 50. Add new section 19.504 to read as follows:

19.504 Orders under multiple-award contracts.

(a) *General.* In accordance with section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)(2)), contracting officers may, at their discretion, set aside orders placed under multiple-award contracts for any of the small business concerns identified in 19.000(a)(3).

(1) The contracting officer shall state in the solicitation and resulting contract whether order set-asides will be discretionary or mandatory when the conditions in 19.502-2 are met at the time of order set-aside, and the specific program eligibility requirements, as applicable, are also then met.

(2) When setting aside an order at or below the simplified acquisition threshold, the contracting officer may set aside the order for any of the small business concerns identified in 19.000(a)(3).

(3) When setting aside an order above the simplified acquisition threshold, the contracting officer shall first consider setting aside the order for the small business socioeconomic contracting programs (i.e., 8(a), HUBZone, service-disabled veteran-owned small business, and women-owned small business) before considering a small business set-aside.

(4) The contracting officer shall comply with the specific program eligibility requirements identified in this part in addition to the ordering procedures for a multiple-award contract (for orders placed under the Federal Supply Schedules Program, see 8.405-5; for orders placed under all other multiple-award contracts, see 16.505).

(b) *Orders under partial set-aside contracts.* (1) Only small business concerns awarded contracts for the portion(s) that were set aside under the solicitation for the multiple-award contract may compete for orders issued under those portion(s).

(2) Small business awardees may compete against other than small business awardees for an order issued under the portion of the multiple-award contract that was not set aside, if the small business received a contract award for the non-set-aside portion.

(c) *Orders under reserves.* (1) The contracting officer may—

(i) Set aside orders for any of the small business concerns identified in 19.000(a)(3) when there are two or more contract awards for that type of small business concern; or

(ii) Issue orders directly to one small business concern for work that it can perform when there is only one contract award to any one type of small business concern identified in 19.000(a)(3).

(2) Small business awardees may compete against other than small business awardees for an order that is not set aside if the small business received a contract award for the supplies or services being ordered.

■ 51. Add new section 19.505 to read as follows:

19.505 Limitations on subcontracting and nonmanufacturer rule.

(a) *Limitations on subcontracting.* To be awarded a set-aside contract, an order under a set-aside, or an order in accordance with 19.504(c)(1)(ii), the small business concern is required to perform as follows:

(1) For services (except construction), at least 50 percent of the cost incurred for personnel with its own employees.

(2) For supplies or products (other than a procurement from a nonmanufacturer of such supplies or products), at least 50 percent of the cost of manufacturing the supplies or products (not including the cost of materials).

(3) For general construction, at least 15 percent of the cost (not including the cost of materials) with its own employees.

(4) For construction by special trade contractors, at least 25 percent of the

cost (not including the cost of materials) with its own employees.

(b) *Compliance period.* A small business contractor is required to comply with the limitations on subcontracting—

(1) For a contract that has been set aside, either by the end of the base term and then by the end of each subsequent option period, or by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(2) For an order set aside under a contract as described in 19.504(a), (b), or (c)(1)(i) or an order issued in accordance with 19.504(c)(1)(ii), by the end of the performance period for the order.

(c) *Nonmanufacturer rule.* (1) To be awarded a set-aside contract or order, or an order issued in accordance with 19.504(c)(1)(ii), for supplies as a nonmanufacturer, a contractor is required to—

(i) Provide the end item of a small business manufacturer, that has been manufactured or produced in the United States or its outlying areas (but see 19.1308(e)(1)(i) for contracts and orders awarded under the HUBZone Program);

(ii) Not exceed 500 employees;

(iii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iv) Take ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice.

(2) In addition to the requirements set forth in (c)(1) of this section, when the end item being acquired is a kit of supplies or other goods, 50 percent of the total value of the components of the kit shall be manufactured in the United States or its outlying areas by small business concerns. Where the Government has specified an item for the kit which is not produced by U.S. small business concerns, such items shall be excluded from the 50 percent calculation. See 13 CFR 121.406(c) for further information regarding nonmanufacturer kit assemblers.

(3) For size determination purposes, there can be only one manufacturer of the end product being acquired. For the purposes of the nonmanufacturer rule, the manufacturer of the end product being acquired is the concern that transforms raw materials and/or miscellaneous parts or components into the end product. Firms which only minimally alter the item being procured do not qualify as manufacturers of the end item, such as firms that add substances, parts, or components to an existing end item to modify its performance, will not be considered the end item manufacturer, where those

identical modifications can be performed by and are available from the manufacturer of the existing end item. See 13 CFR 121.406 for further information regarding manufacturers.

(4) *Waiver of nonmanufacturer rule.*

(i) The SBA may grant an individual or a class waiver so that a nonmanufacturer does not have to furnish the product of a small business (but see 19.1308(e)(2)).

(A) *Class waiver.* SBA may waive the nonmanufacturer rule when SBA has determined that there are no small business manufacturers or processors in the Federal market for a particular class of products. This type of waiver is known as a class waiver and would apply to an acquisition for a specific product (or a product in a class of products). Contracting officers and other interested parties may request that the SBA issue a waiver of the nonmanufacturer rule, for a particular class of products.

(B) *Individual waiver.* The contracting officer may also request a waiver for an individual acquisition because no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation. This type of waiver is known as an individual waiver and would apply only to a specific acquisition.

(ii) Requests for waivers shall be sent via email to nmrwaivers@sba.gov or by mail to the—Director for Government Contracting, United States Small Business Administration, Mail Code 6700, 409 Third Street SW, Washington, DC 20416.

(iii) For the most current listing of class waivers, contact the SBA Office of Government Contracting or go to <https://www.sba.gov/content/class-waivers>.

(5) *Exception to the nonmanufacturer rule.* The SBA provides for an exception to the nonmanufacturer rule when—

(i) The procurement of supplies or a manufactured end product—

(A) Is processed under simplified acquisition procedures (see part 13); or

(B) Is for an order set aside for any of the small business concerns identified in 19.000(a)(3), placed under a multiple-award contract that was competed on a full and open basis;

(ii) The cost is not anticipated to exceed \$25,000; and

(iii) The offeror supplies an end product that is manufactured or produced in the United States.

■ 52. Add new section 19.506 to read as follows:

19.506 Documentation requirements.

(a)(1) The contracting officer shall document the rationale when a contract is not totally set aside for small business in accordance with 19.502–2.

(2) The contracting officer shall document the rationale when a multiple-award contract is not partially set aside, not reserved, and does not allow for setting aside of orders, when these authorities could have been used.

(b) If applicable, the documentation shall include the rationale for not accepting the recommendations made by the agency Director of the Office of Small and Disadvantaged Business Utilization, or, for the Department of Defense, the Director of the Office of Small Business Programs, or the Director’s designee, as to whether a particular acquisition should be awarded under subparts 19.5, 19.8, 19.13, 19.14, or 19.15.

(c) Documentation is not required if a contract award is anticipated to a small business under subpart 19.5, 19.8, 19.13, 19.14, or 19.15.

19.508 [Redesignated as 19.507]

■ 53. Redesignate section 19.508 as section 19.507 and revise paragraphs (c) through (f) and add paragraphs (g) and (h).

The revisions and additions read as follows:

19.507 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. 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). Use the clause at 52.219–6 with its Alternate I when including FPI in the competition in accordance with 19.502–7.

(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. Use the clause at 52.219–7 with its Alternate I when including FPI in the competition in accordance with 19.502–7.

(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 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), and when orders may be issued directly to a small business concern as described in 19.504(c)(1)(ii). For contracts that are set aside, the contracting officer shall indicate in paragraph (d) of the clause whether compliance with the limitations on subcontracting is required at the contract or order level.

(f)(1) The contracting officer shall insert the clause at 52.219–13, Notice of Set-Aside of Orders, in all solicitations for multiple-award contracts under which orders may be set aside for any of the small business concerns identified in 19.000(a)(3), and all contracts awarded from such solicitations.

(2) The contracting officer shall insert the clause at 52.219–13 with its Alternate I in all full and open solicitations and contracts for multiple-award contracts under which orders will be set aside for any of the small business concerns identified in 19.000(a)(3) if the conditions in 19.502–2 are met at the time of order set-aside, and the specific program eligibility requirements, as applicable, are also then met.

(g)(1) The contracting officer shall insert the provision at 52.219–31, Notice of Small Business Reserve, in solicitations for multiple-award contracts that have reserves.

(2) The contracting officer shall insert the clause at 52.219–32 Orders Issued Directly Under Small Business Reserves, in solicitations and the resulting multiple-award contracts that have reserves.

(h) The contracting officer shall insert the clause at 52.219–33, Nonmanufacturer Rule, in solicitations and contracts when the item being acquired has been assigned a manufacturing or supply NAICS code, and any portion of the requirement is set-aside for any of the small business concerns identified in 19.000(a)(3) including multiple-award contracts that provide for the set-aside of orders to small business concerns or for orders issued directly to one small business concern in accordance with 19.504(c)(1)(ii), or is awarded on a sole source basis in accordance with subpart 19.8, 19.13, 19.14, or 19.15. The clause shall not be used when the Small Business Administration has determined that there are no small business manufacturers of the product or end items and has waived the nonmanufacturer rule (see 19.505(c)(4)).

■ 54. Amend section 19.601 by adding paragraph (f) to read as follows:

19.601 General.

* * * * *

(f) For the purpose of receiving a COC on an unrestricted acquisition, a small business nonmanufacturer may furnish any end item produced or manufactured in the United States or its outlying areas.

19.602–3 [Amended]

■ 55. Amend section 19.602–3 in paragraph (a)(2) by removing “Director,” and “(OSDBU)” and adding “Director of the” and “(OSDBU) or, for the Department of Defense, the Director of the Office of Small Business Programs,” in their places, respectively.

■ 56. Amend section 19.602–4 by adding a sentence to the end of paragraph (b) to read as follows:

19.602–4 Awarding the contract.

* * * * *

(b) * * * Where SBA issues a COC, the contracting officer may decide not to award to that offeror for reasons unrelated to responsibility.

* * * * *

■ 57. Amend section 19.702 by revising paragraph (a) to read as follows:

19.702 Statutory requirements.

* * * * *

(a)(1) Except as stated in paragraph (b) of this section, section 8(d) of the Small Business Act (15 U.S.C. 637(d)) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans:

(i) In negotiated acquisitions, each solicitation of offers to perform a contract that is expected to exceed \$700,000 (\$1.5 million for construction) and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award. For a multiple-award contract with more than one North American Industry Classification System (NAICS) code, see paragraph (a)(2)(i) of this section.

(ii) In sealed bidding acquisitions, each invitation for bids to perform a contract that is expected to exceed \$700,000 (\$1.5 million for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. If the selected

bidder fails to submit a plan within the time limit prescribed by the contracting officer, the bidder will be ineligible for award. For a multiple-award contract with more than one NAICS code, see paragraph (a)(2)(i) of this section.

(iii) Each contract modification that causes the value of a contract without a subcontracting plan to exceed \$700,000 (\$1.5 million for construction), shall require the contractor to submit a subcontracting plan for the contract, if the contracting officer determines that subcontracting opportunities exist. For a multiple-award contract with more than one NAICS code, see paragraph (a)(2)(ii) of this section.

(2)(i) For a multiple-award contract with more than one NAICS code, the solicitation referenced in paragraphs (a)(1)(i) and (ii) of this section shall require the apparently successful offeror to submit an acceptable subcontracting plan for either the distinct portion(s) or category(ies) of their proposal for which the offeror is other than small or for the entirety of their proposal, at the offeror's discretion. When determining the need for a subcontracting plan, the contracting officer shall consider the cumulative dollar value of the portion(s) or category(ies) of the offeror's proposal for which the offeror is other than small.

(ii) For a multiple-award contract with more than one NAICS code, the modification referenced in paragraph (a)(1)(iii) of this section shall require the contractor to submit an acceptable subcontracting plan for either the distinct portion(s) or category(ies) of the contract for which the contractor is other than small or for the entirety of their contract, at the contractor's discretion. When determining the need for a subcontracting plan, the contracting officer shall consider the cumulative dollar value of the portion(s) or category(ies) of the contract for which the contractor is other than small.

* * * * *

19.704 [Amended]

■ 58. Amend section 19.704 in paragraph (a) introductory text by removing “19.702(a)(1), (2), and (3)” and adding “19.702(a)(1)(i), (ii), and (iii)” in its place.

19.705–1 [Amended]

■ 59. Amend section 19.705–1 in paragraph (b)(1) by removing “19.702(a)(1)” and adding “19.702(a)” in its place.

19.705–2 [Amended]

■ 60. Amend section 19.705–2 in paragraph (f) by removing “19.702(a)(3)” and “re-representation”

and adding “19.702(a)(1)(iii)” and “re-representation” in their place, respectively.

19.705–5 [Amended]

■ 61. Amend section 19.705–5 in paragraph (b) by removing “19.702(a)(1) and (2)” and adding “19.702(a)(1)(i) and (ii)” in its place.

19.707 [Amended]

■ 62. Amend section 19.707 in paragraph (a)(2) by removing “19.702(a)(1) or (2)” and adding “19.702(a)(1)(i) or (ii)” in its place.

19.708 [Amended]

■ 63. Amend section 19.708 in paragraph (b)(1)(iv) by removing “19.702(a)(3)” and adding “19.702(a)(1)(iii)” in its place.

■ 64. Amend section 19.804–2 by revising the first sentence of paragraph (a) to read as follows:

19.804–2 Agency offering.

(a) After completing its evaluation, the contracting office shall notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work, including 8(a) contracts that are reserved in accordance with 19.503. * * *

* * * * *

■ 65. Revise section 19.804–6 to read as follows:

19.804–6 Indefinite-delivery contracts.

(a) Separate offers and acceptances are not required for individual orders under multiple-award contracts (including the Federal Supply Schedules managed by GSA, multi-agency contracts or Governmentwide acquisition contracts, or indefinite-delivery, indefinite-quantity (IDIQ) contracts) that have been set aside for exclusive competition among 8(a) contractors, and the individual order is to be competed among all 8(a) contract holders. SBA's acceptance of the original contract is valid for the term of the contract. Offers and acceptances are required for individual orders under multiple-award contracts that have not been set aside for exclusive competition among 8(a) contractors.

(b) The contracting officer may issue an order on a sole source basis when—

(1) The multiple-award contract was set aside for exclusive competition among 8(a) participants;

(2) The order has an estimated value less than or equal to the dollar thresholds set forth at 19.805–1(a)(2); and

(3) The offering and acceptance procedures at 19.804–2 and 19.804–3 are followed.

(c) The contracting officer may issue an order directly to one 8(a) contractor in accordance with 19.504(c)(1)(ii) when—

(1) The multiple-award contract was reserved for 8(a) participants;

(2) The order has an estimated value less than or equal to \$7 million for acquisitions assigned manufacturing NAICS codes and \$4 million for all other acquisitions; and

(3) The offering and acceptance procedures at 19.804–2 and 19.804–3 are followed.

(d) An 8(a) contractor may continue to accept new orders under the contract, even if it exits the 8(a) program, or becomes other than small for the NAICS code(s) assigned to the contract.

(e) Agencies may continue to take credit toward their prime contracting small disadvantaged business or small business goals for orders awarded to 8(a) contractors, even after the contractor's 8(a) program term expires, the contractor otherwise exits the 8(a) program, or the contractor becomes other than small for the NAICS code(s) assigned under the 8(a) contract.

However, if an 8(a) contractor rerepresents that it is other than small for the NAICS code(s) assigned under the contract in accordance with 19.301–2 or, where ownership or control of the 8(a) contractor has changed and SBA has granted a waiver to allow the contractor to continue performance (see 13 CFR 124.515), the agency may not credit any subsequent orders awarded to the contractor towards its small disadvantaged business or small business goals.

■ 66. Revise section 19.809 to read as follows:

19.809 Preaward considerations.

19.809–1 Preaward survey.

The contracting officer should request a preaward survey of the 8(a) participant whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the participant's ability to perform, the contracting officer shall refer the matter to SBA for Certificate of Competency consideration under subpart 19.6.

19.809–2 Limitations on subcontracting and nonmanufacturer rule.

(a) *Limitations on subcontracting.* To be awarded a contract or order under the 8(a) program, the 8(a) participant is required to perform—

(1) For services (except construction), at least 50 percent of the cost incurred for personnel with its own employees;

(2) For supplies or products (other than a procurement from a

nonmanufacturer of such supplies or products), at least 50 percent of the cost of manufacturing the supplies or products (not including the cost of materials);

(3) For general construction, at least 15 percent of the cost with its own employees (not including the cost of materials); and

(4) For construction by special trade contractors, at least 25 percent of the cost with its own employees (not including the cost of materials).

(b) *Compliance period.* An 8(a) contractor is required to comply with the limitations on subcontracting—

(1) For a contract under the 8(a) program, either by the end of the base term and then by the end of each subsequent option period or by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(2) For an order competed exclusively among contractors who are 8(a) participants or for an order issued directly to one 8(a) contractor in accordance with 19.504(c)(1)(ii), by the end of the performance period for the order.

(c) *Waiver.* The applicable SBA District Director may waive the provisions in paragraph (b)(1) requiring a participant to comply with the limitations on subcontracting for each period of performance or for each order. Instead, the SBA District Director may permit the participant to subcontract in excess of the limitations on subcontracting where the SBA District Director makes a written determination that larger amounts of subcontracting are essential during certain stages of performance.

(1) The 8(a) participant is required to provide the SBA District Director written assurance that the participant will ultimately comply with the requirements of this section prior to contract completion. The contracting officer shall review the written assurance and inform the 8(a) participant of their concurrence or nonconcurrence. The 8(a) participant can only submit the written assurance to the SBA District Director upon concurrence by the contracting officer.

(2) The contracting officer does not have the authority to waive the provisions of this section requiring an 8(a) participant to comply with the limitations on subcontracting for each period of performance or order, even if the agency has a Partnership Agreement with SBA.

(3) Where the 8(a) participant does not ultimately comply with the limitations on subcontracting by the end

of the contract, SBA will not grant future waivers for the 8(a) participant.

(d) *Nonmanufacturer rule.* See 19.505(c) for application of the nonmanufacturer rule, inclusive of waivers and exceptions to the nonmanufacturer rule.

19.810 [Amended]

■ 67. Amend section 19.810 in paragraph (b)(1)(ii) by removing “Director for Small” and “Director of” and adding “Director for the Office of Small” and “Director of the Office of” in their places, respectively.

■ 68. Amend section 19.811–3 by revising paragraphs (d) and (e) to read as follows:

19.811–3 Contract clauses.

* * * * *

(d) The contracting officer shall insert the clause at 52.219–18, Notification of Competition Limited to Eligible 8(a) Participants, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805. The clause at 52.219–18 with its Alternate I shall be used when competition is to be limited to 8(a) participants within one or more specific SBA districts pursuant to 19.804–2.

(e) For contracts or orders resulting from this subpart, see 19.507(e) for use of 52.219–14, Limitations on Subcontracting, and 19.507(h) for use of 52.219–33, Nonmanufacturer Rule.

19.1303 [Amended]

■ 69. Amend section 19.1303 by removing paragraph (e).

■ 70. Amend section 19.1307 by—
 ■ a. Removing from paragraph (a)(1) “or”;

■ b. Removing the period from the end of paragraph (a)(2) and adding “; or” in its place; and

■ c. Adding paragraph (a)(3).

The addition reads as follows:

19.1307 Price evaluation preference for HUBZone small business concerns.

(a) * * *

(3) For the reserved portion of a solicitation for a multiple-award contract (see 19.503).

* * * * *

■ 71. Revise section 19.1308 to read as follows:

19.1308 Limitations on subcontracting and nonmanufacturer rule.

(a) *Definitions.* See 13 CFR 125.1 for definitions of terms used in paragraph (b) of this section.

(b) *Limitations on subcontracting.* To be awarded a contract or order under the HUBZone program, the HUBZone small business concern is required—

(1) For services (except construction), to spend at least 50 percent of the cost of performance incurred for personnel on its own employees or on the employees of other HUBZone small business concerns;

(2) For supplies or products (other than a procurement from a nonmanufacturer of such supplies or products), to spend at least 50 percent of the cost of manufacturing, excluding the cost of materials, performed by the concern or other HUBZone small business concerns;

(3) For general construction—

(i) To spend at least 15 percent of the cost of performance incurred for personnel on its own employees; and

(ii) To spend at least 50 percent of the cost of performance incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors; or

(4) For construction by special trade contractors—

(i) To spend at least 25 percent of the cost of contract performance incurred for personnel on its own employees; and

(ii) To spend at least 50 percent of the cost of the contract incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors.

(c) *Construction.* Before issuing a solicitation for general construction or construction by special trade contractors, the contracting officer shall determine if at least two HUBZone small business concerns can spend at least 50 percent of the cost of contract performance to be incurred for personnel on their own employees or subcontract employees of other HUBZone small business concerns. If the contracting officer is unable to make this determination, the contracting officer may waive the 50 percent requirement; however, the HUBZone small business concern is still required to meet the cost incurred for personnel requirements in paragraphs (b)(3)(i) and (b)(4)(i).

(d) *Compliance period.* A HUBZone small business contractor is required to comply with the limitations on subcontracting—

(1) For a contract that has been set aside or awarded on a sole source basis to a HUBZone small business concern, either by the end of the base term and then by the end of each subsequent option period or by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(2) For an order set aside for HUBZone small business concerns as

described in 8.405–5 and 16.505(b)(2)(i)(F) or for an order issued directly to a HUBZone small business contractor in accordance with 19.504(c)(1)(ii), by the end of the performance period for the order.

(e) *Nonmanufacturer rule.* (1) To be awarded a contract or order for supplies as a nonmanufacturer under this subpart, a contractor is required—

(i) To provide the end item of a HUBZone small business manufacturer, that has been manufactured or produced in the United States or its outlying areas;

(ii) Not to exceed 500 employees;

(iii) To be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iv) To take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice.

(2) There are no class waivers or waivers to the nonmanufacturer rule for individual solicitations for contracts and orders awarded under the HUBZone Program.

(3) For contracts and orders awarded under the HUBZone Program at or below \$25,000 in total value, a HUBZone small business concern may supply the end item of any manufacturer, including a large business, as long as the product acquired is manufactured or produced in the United States.

■ 72. Revise section 19.1309 to read as follows:

19.1309 Contract clauses.

(a)(1) 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 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) or when orders may be issued directly to one HUBZone small business concern in accordance with 19.504(c)(1)(ii).

(2) The contracting officer shall use the clause with its Alternate I to waive the 50 percent requirement if the conditions at 19.1308(c) apply.

(b)(1) The contracting officer shall insert the clause at 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, in solicitations and contracts for acquisitions conducted using full and open competition.

(2) The contracting officer shall use the clause with its Alternate I to waive

the 50 percent requirement if the conditions at 19.1308(c) apply.

(c) For use of clause 52.219–33, Nonmanufacturer Rule, see the prescription at 19.507(h)(2).

■ 73. Amend section 19.1403 by revising paragraph (d) to read as follows:

19.1403 Status as a service-disabled veteran-owned small business concern.

* * * * *

(d) Any service-disabled veteran-owned small business concern (nonmanufacturer) is required to meet the requirements in 19.1407(c) to receive a benefit under this program.

19.1407 [Redesignated as 19.1408]

■ 74. Redesignate section 19.1407 as section 19.1408.

■ 75. Add new section 19.1407 to read as follows:

19.1407 Limitations on subcontracting and nonmanufacturer rule.

(a) *Limitations on subcontracting.* To be awarded a contract or order under this subpart, the SDVOSB concern is required to—

(1) For services (except construction), spend at least 50 percent of the cost incurred for personnel on its own employees or the employees of other SDVOSBs;

(2) For supplies or products (other than a procurement from a nonmanufacturer of such supplies or products), spend at least 50 percent of the cost of manufacturing the supplies or products (not including the cost of materials) on itself or by other SDVOSBs;

(3) For general construction, spend at least 15 percent of the cost (not including the cost of materials) incurred for personnel on its own employees or the employees of other SDVOSBs; or

(4) For construction by special trade contractors, spend at least 25 percent of the cost (not including the cost of materials) incurred for personnel on its own employees or the employees of other SDVOSBs.

(b) *Compliance period.* An SDVOSB contractor is required to comply with the limitations on subcontracting—

(1) For a contract that has been set aside or awarded on a sole source basis to an SDVOSB concern, either by the end of the base term and then by the end of each subsequent option period or by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(2) For an order set aside for SDVOSB contractors as described in 8.405–5 and 16.505(b)(2)(i)(F) or for an order issued directly to an SDVOSB contractor in

accordance with 19.504(c)(1)(ii), by the end of the performance period for the order.

(c) *Nonmanufacturer rule.* See 19.505(c) for application of the nonmanufacturer rule, inclusive of waivers and exceptions to the nonmanufacturer rule.

■ 76. Revise newly designated section 19.1408 to read as follows:

19.1408 Contract clause.

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 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) or when orders may be issued directly to one service-disabled veteran-owned small business contractor in accordance with 19.504(c)(1)(ii). For contracts that are set aside, the contracting officer shall indicate in paragraph (e) of the clause whether compliance with the limitations on subcontracting is required at the contract level or order level.

19.1503 [Amended]

■ 77. Amend section 19.1503 by removing paragraph (g).

19.1507 [Redesignated as 19.1508]

■ 78. Redesignate section 19.1507 as section 19.1508.

■ 79. Add new section 19.1507 to read as follows:

19.1507 Limitations on subcontracting and nonmanufacturer rule.

(a) *Limitations on subcontracting.* To be awarded a contract or order under the WOSB Program, the contractor is required to perform—

(1) For services (except construction), at least 50 percent of the cost incurred for personnel with its own employees;

(2) For supplies or products (other than a procurement from a nonmanufacturer of such supplies or products), at least 50 percent of the cost of manufacturing the supplies or products (not including the cost of materials);

(3) For general construction, at least 15 percent of the cost with its own employees (not including the cost of materials); or

(4) For construction by special trade contractors, at least 25 percent of the

cost with its own employees (not including the cost of materials).

(b) *Compliance period.* An EDWOSB or WOSB contractor is required to comply with the limitation on subcontracting—

(1) For a contract that has been set aside or awarded on a sole source basis, either by the end of the base term and then by the end of each subsequent option period or by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(2) For an order set aside as described in 8.405-5 and 16.505(b)(2)(i)(F) or for an order issued directly to an EDWOSB or WOSB contractor in accordance with 19.504(c)(1)(ii), by the end of the performance period for the order.

(c) *Nonmanufacturer rule.* See 19.505(c) for application of the nonmanufacturer rule, inclusive of waivers and exceptions to the nonmanufacturer rule.

■ 80. Amend newly designated section 19.1508 by—

■ a. Redesignating paragraph (a) as paragraph (a)(1);

■ b. Removing from the newly designated paragraph (a)(1) “or reserved”;

■ c. Revising the second sentence of newly designated paragraph (a)(1);

■ d. Adding paragraph (a)(2); and

■ e. Revising paragraph (b).

The revisions and addition read as follows:

19.1508 Contract clauses.

(a)(1) * * * 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) or when orders may be issued directly to one EDWOSB contractor in accordance with 19.504(c)(1)(ii).

(2) For contracts that are set aside, the contracting officer shall indicate in paragraph (e) of the clause whether compliance with the limitations on subcontracting is required at the contract level or order level.

(b)(1) 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 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) or when

orders may be issued directly to one WOSB contractor in accordance with 19.504(c)(1)(ii).

(2) For contracts that are set aside, the contracting officer shall indicate in paragraph (e) of the clause whether compliance with the limitations on subcontracting is required at the contract level or order level.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 81. Amend section 42.1503 by revising paragraph (b)(2)(vi) to read as follows:

42.1503 Procedures.

* * * * *

(b) * * *

(2) * * *

(vi) Other (as applicable) (e.g., trafficking violations, tax delinquency, failure to report in accordance with contract terms and conditions, defective cost or pricing data, terminations, suspension and debarments, and failure to comply with limitations on subcontracting).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 82. Amend section 52.204-8 by—

■ a. Revising the date of the provision;

■ b. Revising paragraph (c)(1)(xii) introductory text;

■ c. Adding paragraph (c)(1)(xii)(C); and

■ d. Adding Alternate I.

The revision and additions read as follows:

52.204-8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (MAR 2020)

* * * * *

(c)(1) * * *

(xii) 52.219-1, Small Business Program Representations (Basic, Alternates I, and II). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

* * * * *

(C) The provision with its Alternate II applies to solicitations that will result in a multiple-award contract with more than one NAICS code assigned.

* * * * *

Alternate I (MAR 2020). As prescribed in 4.1202(a), substitute the following paragraph (a) for paragraph (a) of the basic provision:

(a)(1) The North American Industry Classification System (NAICS) codes and corresponding size standards for this acquisition are as follows; the categories or portions these NAICS codes are assigned to are specified elsewhere in the solicitation:

NAICS code	Size standard

[Contracting Officer to insert NAICS codes and size standards].

(2) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture (i.e., nonmanufacturer), is 500 employees.

■ 83. Amend section 52.212-1 by revising the date of the provision and paragraph (a) to read as follows:

52.212-1 Instructions to Offerors-Commercial Items.

* * * * *

Instructions to Offerors-Commercial Items (MAR 2020)

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code(s) and small business size standard(s) for this acquisition appear elsewhere in the solicitation.

However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

* * * * *

■ 84. Amend section 52.212-3 by—

■ a. Revising the date of the provision; and

■ b. Removing from paragraph (b)(2) introductory text “business size standard” and “NAICS code” and adding “business size standard(s)” and “NAICS code(s)” in their place, respectively.

The revision reads as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (MAR 2020)

* * * * *

■ 85. Amend section 52.212-5 by—

■ a. Revising the date of the clause;

■ b. Revising paragraphs (b)(11), (12), (14), (15), (17) through (19), and (21) through (24);

■ c. Redesignating paragraphs (b)(25) through (60) as paragraphs (b)(27) through (62), respectively; and

■ d. Adding new paragraphs (b)(25) and (26).

The revisions and additions 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 (MAR 2020)

- * * * * *
- (b) * * *
 - (11)(i) 52.219–3, Notice of HUBZone Set-Aside or Sole Source Award (MAR 2020) (15 U.S.C. 657a).
 - (ii) Alternate I (MAR 2020) of 52.219–3.
 - (12)(i) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (MAR 2020) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
 - (ii) Alternate I (MAR 2020) of 52.219–4.
 - * * * * *
 - (14)(i) 52.219–6, Notice of Total Small Business Set-Aside (MAR 2020) (15 U.S.C. 644).
 - (ii) Alternate I (MAR 2020).
 - (15)(i) 52.219–7, Notice of Partial Small Business Set-Aside (MAR 2020) (15 U.S.C. 644).
 - (ii) Alternate I (MAR 2020) of 52.219–7.
 - * * * * *
 - (17)(i) 52.219–9, Small Business Subcontracting Plan (MAR 2020) (15 U.S.C. 637(d)(4)).
 - (ii) * * *
 - (iii) * * *
 - (iv) Alternate III (MAR 2020) of 52.219–9.
 - (v) * * *
 - (18) 52.219–13, Notice of Set-Aside of Orders (MAR 2020) (15 U.S.C. 644(r)).
 - (19) 52.219–14, Limitations on Subcontracting (MAR 2020) (15 U.S.C. 637(a)(14)).
 - * * * * *
 - (21) 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (MAR 2020) (15 U.S.C. 657f).
 - (22)(i) 52.219–28, Post-Award Small Business Program Rerepresentation (MAR 2020) (15 U.S.C. 632(a)(2)).
 - (ii) Alternate I (MAR 2020) of 52.219–28.
 - (23) 52.219–29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (MAR 2020) (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 (MAR 2020) (15 U.S.C. 637(m)).
 - (25) 52.219–32, Orders Issued Directly Under Small Business Reserves (MAR 2020) (15 U.S.C. 644(r)).
 - (26) 52.219–33, Nonmanufacturer Rule (MAR 2020) (15 U.S.C. 637(a)(17)).
 - * * * * *

- 86. Amend section 52.219–1 by—
- a. Revising the date of the clause and paragraph (b)(3);
- b. Removing paragraph (d)(1);
- c. Redesignating the paragraph (d)(2) introductory text as paragraph (d) introductory text;

- d. Redesignating paragraphs (d)(2)(i) through (iii) as paragraphs (d)(1) through (3);
- e. Adding Alternate II.
The revision and addition read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (MAR 2020)

* * * * *

- (b) * * *
 - (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture (*i.e.*, nonmanufacturer), is 500 employees.

* * * * *

Alternate II (MAR 2020). As prescribed in 19.309(a)(3), substitute the following paragraphs (b) and (c)(1) for paragraphs (b) and (c)(1) of the basic provision:

(b)(1) The North American Industry Classification System (NAICS) codes and corresponding size standards for this acquisition are as follows; the categories or portions these NAICS codes are assigned to are specified elsewhere in the solicitation:

NAICS code	Size standard
_____	_____
_____	_____
_____	_____

[Contracting Officer to insert NAICS codes and size standards].

(2) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture (*i.e.*, nonmanufacturer), is 500 employees.

(c) *Representations.* (1) The Offeror shall represent its small business size status for each one of the NAICS codes assigned to this acquisition under which it is submitting an offer.

NAICS code	Small business concern (yes/no)
_____	_____
_____	_____
_____	_____

[Contracting Officer to insert NAICS codes.]

- 87. Amend section 52.219–3 by—
- a. Revising the introductory text, the date of the clause, and paragraph (a);
- b. Removing from paragraph (b)(1) “or reserved for,”;
- c. Removing from paragraph (b)(2) “and”;
- d. Removing the period from the end of paragraph (b)(3) and adding “; and” in its place;
- e. Adding paragraph (b)(4);

- f. Revising paragraph (d);
- g. Removing paragraph (f);
- h. Redesignating paragraph (e) as paragraph (f);
- i. Adding new paragraph (e);
- j. Removing from newly designated paragraph (f) “will” and adding “shall” in its place; and
- d. Revising Alternate I.

The revisions and additions read as follows:

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

As prescribed in 19.1309(a)(1), insert the following clause:

Notice of HUBZone Set-Aside or Sole Source Award (MAR 2020)

(a) *Definition.* See 13 CFR 125.1 and 126.103 for definitions of terms used in the clause.

(b) * * *

(4) Orders issued directly to HUBZone small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii).

* * * * *

(d) *Limitations on subcontracting.* The Contractor shall spend—

- (1) For services (except construction), at least 50 percent of the cost of contract performance incurred for personnel on its own employees or employees of other HUBZone small business concerns;
- (2) For supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, on the concern or other HUBZone small business concerns;

(3) *For general construction—*

- (i) At least 15 percent of the cost of contract performance incurred for personnel on its own employees;
- (ii) At least 50 percent of the cost of the contract performance incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors; and
- (iii) No more than 50 percent of the cost of contract performance incurred for personnel on concerns that are not HUBZone small business concerns; or

(4) *For construction by special trade contractors—*

- (i) At least 25 percent of the cost of contract performance incurred for personnel on its own employees;
- (ii) At least 50 percent of the cost of the contract performance incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors;
- (iii) No more than 50 percent of the cost of contract performance to be incurred for personnel on concerns that are not HUBZone small business concerns.

(e) A HUBZone small business contractor shall comply with the limitations on subcontracting as follows:

- (1) For contracts, in accordance with paragraph (b)(1) or (2) of this clause—

[Contracting Officer check as appropriate.]

By the end of the base term of the contract and then by the end of each subsequent option period; or

By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraph (b)(3) or (4) of this clause, by the end of the performance period for the order.

* * * * *

Alternate I (MAR 2020). As prescribed in 19.1309(a)(2), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

(3) For general construction, at least 15 percent of the cost of the contract performance to be incurred for personnel shall be spent on the concern's employees; or

(4) For specialty trade construction, at least 25 percent of the cost of the contract performance to be incurred for personnel shall be spent on the concern's employees.

- 88. Amend section 52.219-4 by—
a. Revising the introductory text, clause date, and paragraph (a);
b. Revising paragraph (d);
c. Removing paragraph (f);
d. Redesignating paragraph (g) as paragraph (f); and
e. Revising Alternate I.

The revised text reads as follows:

52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.

As prescribed in 19.1309(b)(1), insert the following clause:

Notice of Price Evaluation Preference for HUBZone Small Business Concerns (MAR 2020)

(a) Definition. See 13 CFR 126.103 for the definition of HUBZone.

* * * * *

(d) Limitations on subcontracting. The Contractor shall spend—

(1) For services (except construction), at least 50 percent of the cost of personnel for contract performance on its own employees or employees of other HUBZone small business concerns;

(2) For supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, on the concern or other HUBZone small business concerns;

(3) For general construction—

(i) At least 15 percent of the cost of contract performance to be incurred for personnel on its own employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel on concerns that are not HUBZone small business concerns; or

(4) For construction by special trade contractors—

(i) At least 25 percent of the cost of contract performance to be incurred on its own employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel on concerns that are not HUBZone small business concerns.

* * * * *

Alternate I (MAR 2020). As prescribed in 19.1309(b)(2), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

(3) For general construction, at least 15 percent of the cost of the contract performance to be incurred for personnel on its own employees; or

(4) For construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel on its own employees.

* * * * *

- 89. Amend section 52.219-6 by—

a. Revising the introductory text and the date of the clause;

b. Removing from paragraph (b)(1) "or reserved";

c. Removing paragraph (d) and Alternate I;

d. Redesignating Alternate II as Alternate I; and

e. Revising the date and the introductory text of the newly designated Alternate I.

The revisions read as follows:

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

As prescribed in 19.507(c), insert the following clause:

Notice of Total Business Set-Aside (MAR 2020)

* * * * *

Alternate I (MAR 2020). As prescribed in 19.507(c), substitute the following paragraph (c) for paragraph (c) of the basic clause:

* * * * *

- 90. Amend section 52.219-7 by—

a. Revising the introductory text and the date of the clause;

b. Revising paragraphs (b) and (c);

c. Adding paragraphs (d) and (e);

d. Removing Alternate I; and

e. Redesignating Alternate II as Alternate I and revising it.

The revisions and additions read as follows:

52.219-7 Notice of Partial Small Business Set-Aside.

As prescribed in 19.507(d), insert the following clause:

Notice of Partial Small Business Set-Aside (MAR 2020)

* * * * *

(b) Applicability. This clause applies only to contracts that have been partially set aside for small business concerns.

(c) General. (1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns identified in 19.000(a)(3). Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected on the set-aside portion of the requirement.

(2) Small business concerns may submit offers and compete for the non-set-aside portion and the set-aside portion.

(d) The Offeror shall—

[Contracting Officer check as appropriate.]

Submit a separate offer for each portion of the solicitation for which it wants to compete (i.e. set-aside portion, non-set-aside portion, or both); or

Submit one offer to include all portions for which it wants to compete.

(e) Partial set-asides of multiple-award contracts. (1) Small business concerns will not compete against other than small business concerns for any order issued under the part or parts of the multiple-award contract that are set aside.

(2) Small business concerns may compete for orders issued under the part or parts of the multiple-award contract that are not set aside, if the small business concern received a contract award for the non-set-aside portion.

(End of Clause)

Alternate I (MAR 2020). As prescribed in 19.507(d), add the following paragraph (f) to the basic clause:

(f) Notwithstanding paragraph (c) of this clause, offers from Federal Prison Industries, Inc., will be solicited and considered for both the set-aside and non-set-aside portion of this requirement.

- 91. Amend section 52.219-9 by—

a. Revising the date of the clause;

b. Removing from paragraph (l)(1)(ii)(B)

"19.702(a)(3)" and adding "19.702(a)(1)(iii)" in its place;

c. Revising the date of Alternate III; and

d. Removing from paragraph (l)(1)(ii)(B) of Alternate III

"19.702(a)(3)" and adding "19.702(a)(1)(iii)" in its place.

The revisions read as follows:

52.219-9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (MAR 2020)

* * * * *

Alternate III (MAR 2020) * * *

* * * * *

- 92. Amend section 52.219-13 by—

a. Revising the introductory text and the date of the clause;

b. Designating the undesignated paragraph as paragraph (b);

- c. Adding paragraph (a); and
- d. Adding Alternate I.

The revision and additions read as follows:

52.219–13 Notice of Set-Aside of Orders.

As prescribed in 19.507(f)(1), insert the following clause:

Notice of Set-Aside of Orders (MAR 2020)

(a) The Contracting Officer may set aside orders for the small business concerns identified in 19.000(a)(3).

* * * * *

Alternate I (MAR 2020). As prescribed in 19.507(f)(2), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer will set aside orders for the small business concerns identified in 19.000(a)(3) when the conditions of FAR 19.502–2 and the specific program eligibility requirements are met, as applicable.

- 93. Amend section 52.219–14 by—
- a. Revising the introductory text and the date of the clause;
- b. Removing from paragraph (b)(1) “or reserved”;
- c. Removing from paragraph (b)(2) “and”;
- d. Removing from paragraph (b)(3) “small business” and adding “small business concerns” in its place and removing the period at the end and adding “; and” in its place;
- e. Adding paragraph (b)(4);
- f. Revising paragraph (c) introductory text; and
- g. Adding paragraph (d).

The revisions and additions read as follows:

52.219–14 Limitations on Subcontracting.

As prescribed in 19.507(e), insert the following clause:

Limitations on Subcontracting (MAR 2020)

* * * * *

(b) * * *

(4) Orders issued directly to small business concerns or 8(a) participants under multiple-award contracts as described in 19.504(c)(1)(ii).

(c) *Limitations on subcontracting.* By submission of an offer and execution of a contract, the Contractor agrees that in performance of the contract in the case of a contract for—

* * * * *

(d) The Contractor shall comply with the limitations on subcontracting as follows:

- (1) For contracts, in accordance with paragraph (b)(1) and (2) of this clause—
[Contracting Officer check as appropriate.]
___ By the end of the base term of the contract and then by the end of each subsequent option period; or
- ___ By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (b)(3) and (4) of this clause, by the end of the performance period for the order.

* * * * *

- 94. Amend section 52.219–18 by revising the date of the clause and paragraph (d) and removing Alternate II. The revision reads as follows:

52.219–18 Notification of Competition Limited to Eligible 8(a) Participants.

* * * * *

Notification of Competition Limited to Eligible 8(a) Participants (MAR 2020)

* * * * *

(d) The _____ [insert name of SBA’s contractor] shall notify the _____ [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock.

* * * * *

- 95. Amend section 52.219–27 by—
- a. Revising the introductory text and the date of the clause;
- b. Removing from paragraph (b)(1) “or reserved”;
- c. Removing from paragraph (b)(2) “and”;
- d. Removing the period from the end of paragraph (b)(3) and adding “; and” in its place;
- e. Adding paragraph (b)(4);
- f. Revising the paragraph (d) subject heading;
- g. Removing paragraph (f);
- h. Redesignating paragraph (e) as paragraph (f); and
- i. Adding new paragraph (e).

The revisions and additions read as follows:

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

As prescribed in 19.1408, insert the following clause:

Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (MAR 2020)

* * * * *

(b) * * *

(4) Orders issued directly to service-disabled veteran-owned small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii).

* * * * *

(d) *Limitations on subcontracting.* * * *

* * * * *

(e) A service-disabled veteran-owned small business concern shall comply with the limitations on subcontracting as follows:

- (1) For contracts, in accordance with paragraphs (b)(1) and (2) of this clause—
[Contracting Officer check as appropriate.]
___ By the end of the base term of the contract and then by the end of each subsequent option period; or
- ___ By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (b)(3) and (4) of this clause, by the end of the performance period for the order.

* * * * *

- 96. Amend section 52.219–28 by—
- a. Revising the introductory text and the date of the clause;
- b. Removing from the definition of “Small business concern” in paragraph (a) the phrase “paragraph (c)” and adding “paragraph (d)” in its place;
- c. Revising paragraph (b) introductory text;
- d. Designating paragraphs (c) through (g) as paragraphs (d) through (h);
- e. Adding new paragraph (c);
- f. Removing from newly designated paragraph (d) the two occurrences of “code” and adding “code(s)” in their places;
- g. Revising newly designated paragraph (f);
- h. Removing from newly designated paragraph (g) “paragraphs (e) or (g)” and adding “paragraphs (f) or (h)” in its place;
- i. Revising newly designated paragraph (h); and
- j. Adding Alternate I.

The revisions and additions read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

As prescribed in 19.309(c)(1), insert the following clause:

Post-Award Small Business Program Rerepresentation (MAR 2020)

* * * * *

(b) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

* * * * *

(c) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

* * * * *

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor’s current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see

paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

* * * * *

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

(1) The Contractor represents that it is, is not a small business concern under NAICS Code _____ assigned to contract number _____.

(2) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it is, is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it is, is not a women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. [Complete only if the Contractor represented itself as a women-owned small business concern in paragraph (h)(3) of this clause.] The Contractor represents that—

(i) It is, is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(4)(i) of this clause is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The Contractor shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: _____.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the Contractor represented itself as a women-owned small business concern eligible under the WOSB Program in (h)(4) of this clause.] The Contractor represents that—

(i) It is, is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(5)(i) of this clause is accurate for each EDWOSB concern participating in the joint venture. [The Contractor shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the

joint venture: _____.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(6) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it is, is not a veteran-owned small business concern.

(7) [Complete only if the Contractor represented itself as a veteran-owned small business concern in paragraph (h)(6) of this clause.] The Contractor represents that it is, is not a service-disabled veteran-owned small business concern.

(8) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It is, is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

[Contractor to sign and date and insert authorized signer's name and title.]
* * * * *

Alternate I (MAR 2020). As prescribed in 19.309(c)(2), substitute the following paragraph (h)(1) for paragraph (h)(1) of the basic clause:

(h)(1) The Contractor represents its small business size status for each one of the NAICS codes assigned to this contract.

NAICS code	Small business concern (yes/no)
_____	_____
_____	_____
_____	_____

[Contracting Officer to insert NAICS codes.]

- 97. Amend section 52.219–29 by—
- a. Revising the introductory text and the date of the clause;
- b. Removing from paragraph (b)(1) “or reserved”;
- c. Removing from paragraph (b)(2) “and”;
- d. Removing from paragraph (b)(3) the period at the end and adding “; and” in its place;
- e. Adding paragraph (b)(4);

- f. Removing from paragraph (c)(1) “apparent successful offeror” and adding “EDWOSB concerns” in its place;
- g. Removing from paragraph (c)(3) “contracting officer” and adding “Contracting Officer” in its place;
- h. Revising the paragraph (d) subject heading;
- i. Removing paragraph (f);
- j. Redesignating paragraph (e) as paragraph (f); and
- k. Adding new paragraph (e).

The revisions and additions 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 19.1508(a), insert the following clause:

Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (MAR 2020)

* * * * *

(b) * * *
(4) Orders issued directly to EDWOSB concerns under multiple-award contracts as described in 19.504(c)(1)(ii).

* * * * *

(d) Limitations on subcontracting. * * *

* * * * *

(e) An EDWOSB concern shall comply with the limitations on subcontracting as follows:

- (1) For contracts, in accordance with paragraphs (b)(1) and (2) of this clause— [Contracting Officer check as appropriate.]
 ___ By the end of the base term of the contract and then by the end of each subsequent option period; or
 ___ By the end of the performance period for each order issued under the contract.
- (2) For orders, in accordance with paragraphs (b)(3) and (4) of this clause, by the end of the performance period for the order.

* * * * *

- 98. Amend section 52.219–30 by—
- a. Revising the introductory text and the date of the clause;
- b. Removing from paragraph (b)(1) “or reserved”;
- c. Removing from paragraph (b)(2) “and”;
- d. Removing the period from the end of paragraph (b)(3) and adding “; and” in its place;
- e. Adding paragraph (b)(4);
- f. Revising the paragraph (d) subject heading;
- g. Removing paragraph (f);
- h. Redesignating paragraph (e) as paragraph (f); and
- i. Adding new paragraph (e).

The revisions and additions 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 19.1508(b), 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 (MAR 2020)

* * * * *

(b) * * *

(4) Orders issued directly to WOSB concerns eligible under the WOSB Program under multiple-award contracts as described in 19.504(c)(1)(ii).

* * * * *

(d) *Limitations on subcontracting.* * * *

* * * * *

(e) A WOSB concern eligible under the WOSB Program shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (b)(1) and (2) of this clause—
[Contracting Officer check as appropriate.]

By the end of the base term of the contract and then by the end of each subsequent option period; or

By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (b)(3) and (4) of this clause, by the end of the performance period for the order.

* * * * *

■ 99. Add section 52.219–31 to read as follows:

52.219–31 Notice of Small Business Reserve.

As prescribed in 19.507(g)(1), insert the following provision:

Notice of Small Business Reserve (MAR 2020)

(a) This solicitation contains a reserve for one or more small business concerns identified at 19.000(a)(3). The small business program eligibility requirements apply.

(b) The small business concern(s) eligible for participation in the reserve shall submit one offer that addresses each portion of the solicitation for which it wants to compete. Award of the contract will be based on criteria identified elsewhere in the solicitation.

(End of provision)

■ 100. Add section 52.219–32 to read as follows:

52.219–32 Orders Issued Directly Under Small Business Reserves.

As prescribed in 19.507(g)(2), insert the following clause:

Orders Issued Directly Under Small Business Reserves (MAR 2020)

(a) *Applicability.* This clause applies only to contracts that were reserved for any of the small business concerns identified at 19.000(a)(3).

(b) If there is only one contract award to any one type of small business concern

identified in 19.000(a)(3) as a result of the reserve, the Contracting Officer may issue an order or orders directly to the concern.

(End of clause)

■ 101. Add section 52.219–33 to read as follows:

52.219–33 Nonmanufacturer Rule.

As prescribed in 19.507(h), insert the following clause:

Nonmanufacturer Rule (MAR 2020)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) *Applicability.* This clause applies to—
(1) Contracts that have been set aside, in total or in part;

(2) Orders under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F) that have been set aside for any of the small business concerns identified in 19.000(a)(3); and

(3) Orders issued directly to any of the small business concerns identified in 19.000(a)(3) under multiple-award contracts as described in 19.504(c)(1)(ii).

(c)(1) The Contractor shall—

(i)(A) Provide the end item of a small business manufacturer, or if set aside or awarded on a sole source basis to a HUBZone small business, provide the end item of a HUBZone small business manufacturer, that has been manufactured or produced in the United States or its outlying areas; or

(B) If this procurement is an order as described in 8.405–5 or 16.505(b)(2)(i)(F) or processed under simplified acquisition procedures (see part 13), and the total amount does not exceed \$25,000, provide the end item of any domestic manufacturer;

(ii) Not exceed 500 employees;

(iii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iv) Take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice.

(2) In addition to the requirements set forth in paragraph (c)(1) of this clause, when the end item being acquired is a kit of supplies or other goods, 50 percent of the total value of the components of the kit shall be manufactured in the United States or its outlying areas by small business concerns. Where the Government has specified an item for the kit which is not produced by U.S. small business concerns, such items shall be excluded from the 50 percent calculation. See 13 CFR 121.406(c) for further information regarding nonmanufacturers.

(3) For size determination purposes, there can be only one manufacturer of the end product being acquired. For the purposes of the nonmanufacturer rule, the manufacturer of the end product being acquired is the concern that transforms raw materials and/or miscellaneous parts or components into the end product. Firms which only minimally alter the item being procured do not qualify as manufacturers of the end item, such as firms that add substances, parts, or components to an existing end item to modify its performance, will not be considered the end item manufacturer, where

those identical modifications can be performed by and are available from the manufacturer of the existing end item. See 13 CFR 121.406 for further information regarding manufacturers.

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2020–0051, Sequence No. 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–05; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2020–05, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2020–05, which precedes this document. These documents are also available via the internet at <http://www.regulations.gov>.

DATES: February 27, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868 or by email at mahruba.uddowla@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–05, FAR Case 2014–002.