

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket No. FAR–2022–0051, Sequence No. 5]

**Federal Acquisition Regulation; Federal Acquisition Circular 2022–08; Introduction**

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

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2022–08. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

**DATES:** For effective dates see the separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

**RULES LISTED IN FAC 2022–08**

Item	Subject	FAR case	Analyst
I .....	Policy on Joint Ventures .....	2017–019	Jones.
II .....	Construction Contract Administration .....	2018–020	Bowman.
III .....	Update of Historically Underutilized Business Zone Program.	2019–007	Jones.
IV .....	Certification of Women-Owned Small Businesses .....	2020–013	Jones.
V .....	Technical Amendments.		

**ADDRESSES:** The FAC, including the SECG, is available at <https://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:** Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2022–08 amends the FAR as follows:

**Item I—Policy on Joint Ventures (FAR Case 2017–019)**

This final rule amends the Federal Acquisition Regulation (FAR) to align with the Small Business Administration (SBA) regulations regarding mentor-protégé joint ventures and to provide clarification regarding joint ventures under the 8(a) Program. The changes will allow mentor-protégé joint ventures to qualify as small businesses, or to qualify under a socioeconomic program for the purposes of participation in procurements under FAR part 19. In addition, this rule provides consistent guidance to contracting officers on how to handle joint ventures under the 8(a) Program and the small business socioeconomic programs.

**Item II—Construction Contract Administration (FAR Case 2018–020)**

This final rule amends the FAR to implement section 855 of the of the John S. McCain National Defense Authorization Act for Fiscal Year 2019

(Pub. L. 115–232), codified at 15 U.S.C. 644(w) in the Small Business Act. Section 855 requires Federal agencies to provide a notice, along with solicitations for construction contracts anticipated to be awarded to small businesses, to prospective offerors that includes information about the agency’s policies or practices in complying with FAR requirements related to the timely definitization of requests for equitable adjustment on construction contracts. The notice must include data regarding the time it took the agency to definitize requests for equitable adjustment on construction contracts for the three-year period preceding the issuance of the notice.

The final FAR rule requires contracting officers to transmit in the solicitation notice on the Governmentwide point of entry information in construction solicitations anticipated to be awarded to a small business pursuant to part 19, that includes a description of agency-specific policies or procedures regarding definitization of equitable adjustments for change orders under construction contracts. Additionally, agencies are required to include past performance data in the solicitation notice, for the three fiscal years preceding the issuance of the solicitation notice, regarding the time required to definitize equitable adjustments for change orders under construction contracts using the table format provided in the FAR text, or

provide the address of an agency-specific, publicly accessible website containing this information. The final rule also describes an adequate change order definitization proposal as containing sufficient information to enable the contracting officer to conduct meaningful analyses and audits of the information contained in the proposal.

**Item III—Update of Historically Underutilized Business Zone Program (FAR Case 2019–007)**

This final rule amends the FAR to implement changes to the SBA regulations for the Historically Underutilized Business Zone (HUBZone) Program. This rule specifies that SBA now certifies HUBZone small business concerns and HUBZone entities are no longer required to represent their HUBZone status with each offer. In addition, contracting officers may now award HUBZone set-aside and sole-source contracts at or below the simplified acquisition threshold. This rule also makes minor changes to the HUBZone protest procedures.

**Item IV—Certification of Women-Owned Small Businesses (FAR Case 2020–013)**

This final rule amends the FAR to align with SBA’s regulations regarding certification of economically disadvantaged women-owned small business (EDWOSB) concerns and

women-owned small business (WOSB) concerns. This rule requires EDWOSBs and WOSBs participating in the Women-Owned Small Business Program (the Program) to apply for certification through SBA or a SBA-approved third-party certifier to be eligible for WOSB or EDWOSB set-aside or sole-source contracts. EDWOSB and WOSB concerns that are not certified will not be eligible for set-aside and sole-source contracts under the Program. WOSBs that do not participate in the Program may continue to represent their status, be awarded contracts outside the Program, and these contracts will continue to count toward an agency's goal for awards to WOSBs.

#### Item V—Technical Amendments

Administrative changes are made at FAR 4.1202, 19.102, and 19.309. The date change is to provide additional time to implement the policy addressing the assignment of North American Industry Classification System codes to orders placed under multiple award contracts, as covered by changes made by FAR case 2014–002, *Set-Asides Under Multiple Award Contracts*.

#### William F. Clark,

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

Federal Acquisition Circular (FAC) 2022–08 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 2022–08 is effective September 23, 2022 except for Items I through IV, which are effective October 28, 2022.

#### John M. Tenaglia,

*Principal Director, Defense Pricing and Contracting, Department of Defense.*

#### Jeffrey A. Koses,

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

#### Karla Smith Jackson,

*Assistant Administrator for Procurement, Senior Procurement Executive, National Aeronautics and Space Administration.*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2, 9, 15, 19, and 52

[FAC 2022–08; FAR Case 2017–019; Item I; Docket No. FAR–2017–019, Sequence No. 1]

RIN 9000–AN59

#### Federal Acquisition Regulation: Policy on Joint Ventures

**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 statutory and regulatory changes regarding joint ventures made by the Small Business Administration (SBA) in its final rule published in the **Federal Register** on July 25, 2016, and to clarify that 8(a) joint ventures are not certified into the 8(a) program. Additionally, the rule implements SBA's statutory and regulatory changes that eliminated SBA approval of joint venture agreements for competitive 8(a) awards.

**DATES:** Effective October 28, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Malissa Jones, Procurement Analyst, at 571–882–4687 or by email at [Malissa.Jones@gsa.gov](mailto:Malissa.Jones@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAC 2022–08, FAR Case 2017–019.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 85 FR 34561 on June 5, 2020, to revise the FAR to implement statutory and regulatory changes made by the SBA regarding joint ventures. These changes allow a joint venture comprised of a protégé and its mentor to qualify as a small business or under a socioeconomic program (e.g., 8(a)) for which the protégé qualifies. These changes also provide updated requirements for other joint ventures to qualify as small businesses or to qualify under a socioeconomic program.

Section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240) and

section 1641 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239; 15 U.S.C. 657r) authorized the SBA Administrator to establish mentor-protégé programs for small business concerns, service-disabled veteran owned small business (SDVOSB) concerns, women-owned small business concerns in the Women-Owned Small Business (WOSB) Program, and HUBZone small business concerns modeled after the mentor-protégé program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)). On July 25, 2016, SBA issued a final rule (81 FR 48558) that implemented the mentor-protégé programs at 13 CFR 125.9. SBA's final rule allows a joint venture comprised of a protégé and its mentor to seek any type of small business contract, including a contract under a socioeconomic program, for which the protégé qualifies.

Additionally, this rule implements SBA's final rule published on October 16, 2020, at 85 FR 66146, which implemented statutory and regulatory changes that eliminated SBA approval of joint venture agreements for competitive 8(a) awards.

For further details see Section IV of this preamble, and see Section II of the proposed rule.

Seven respondents submitted public comments in response to 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; however, no changes were made as a result of the public comments received. A discussion of the comments received, and the changes made to the rule as a result of SBA's final rule (85 FR 66146) published October 16, 2020, are provided as follows:

##### A. Summary of Significant Changes From the Proposed Rule

This final rule makes changes to paragraph (a) at FAR 19.703, Eligibility requirements for participating in the program, to add HUBZone small business to paragraphs (2)(i) and (ii). The proposed language at FAR 19.805–2(d)(2) is revised to clarify that SBA does not approve joint ventures for competitive awards, and the proposed language regarding SBA approval of joint ventures at 19.805–2(d)(2) and (e) is removed. Conforming changes are made to 52.219–18. These changes are required to resolve conflicts between the changes in the proposed rule and SBA's