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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 124, 125, and 126

RIN 3245-AF74

Inflationary Adjustments to Acquisition-Related Dollar Thresholds

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule, with request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its regulations to implement the statutorily required inflationary adjustment of the Agency's acquisition-related dollar thresholds and to make SBA's regulations consistent with the inflationary adjustments that are already codified in the Federal Acquisition Regulation (FAR).

DATES: *Effective Date:* This rule is effective on September 14, 2009.

Comment Date: Comments must be received on or before October 14, 2009.

ADDRESSES: You may submit comments, identified by RIN 3245-AF74 by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov> and follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD-ROM submissions:* Dean Koppel, Assistant Director for Policy and Research, 409 Third Street, SW., Washington, DC 20416.

- *Hand Delivery/Courier:* Dean Koppel, Assistant Director for Policy and Research, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on <http://www.Regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.Regulations.gov>, please submit the information to Dean Koppel and highlight the information that you consider to be CBI and explain why you believe this information

should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Director for Policy, and Research, at (202) 205-7322 or by e-mail at dean.koppel@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Small Business Act provides thresholds with respect to 8(a) Business Development (8(a)), Historically Underutilized Business Zone (HUBZone), Service Disabled Veteran-Owned (SDVO), and other Government Contracting Programs. For example, work offered into the 8(a) Program shall be competed among eligible 8(a) participants if the value of the procurement is greater than \$5 million for procurements with manufacturing North American Industry Classification System (NAICS) codes and greater than \$3 million for procurements with other than manufacturing NAICS codes, commonly referred to as "all other" procurements. Section 431a of title 41 of the United States Code authorizes the Office of Federal Procurement Policy's FAR Council to review all statutes with dollar based acquisition-related thresholds and adjust for inflation where appropriate. The FAR Council reviewed all such thresholds and decided that thresholds contained within the Small Business Act should be adjusted. The FAR final rule, published on September 28, 2006, at 71 FR 57363, amended the following FAR provisions and established the adjusted dollar based acquisition thresholds for SBA's small business programs.

| FAR Citation | Threshold adjustment |
|-----------------------------|----------------------|
| FAR 7.104(d)(2)(i)(A) | \$7,500,000 |
| FAR 7.104(d)(2)(i)(B) | 5,500,000 |
| FAR 7.107(b)(1) | 86,000,000 |
| FAR 7.107(b)(2) | 8,600,000 |
| FAR 19.702(a)(1) | 550,000 |
| FAR 19.702(a)(2) | 550,000 |
| FAR 19.704(a)(9) | 550,000 |
| FAR 19.708(b)(1) | 550,000 |
| FAR 19.805-1(a)(2) | 5,500,000 |
| FAR 19.805-1(a)(2) | 3,500,000 |
| FAR 19.1306(a)(2)(i) | 5,500,000 |
| FAR 19.1306(a)(2)(ii) | 3,500,000 |
| FAR 19.1406(a)(2)(i) | 5,500,000 |

Because these adjusted thresholds affect SBA's contracting programs, this

rule makes the necessary changes to the Agency's regulations to ensure consistency with the FAR.

II. Section By Section Analysis

SBA is amending § 124.506(a) to inform the users about the inflationary adjustments for the 8(a) Program's competitive thresholds. Thresholds within this section are stating the total dollar values for determining if procurements shall be competed among 8(a) firms or awarded as 8(a) sole-source contracts. These thresholds are acquisition-related dollar thresholds as defined elsewhere in this preamble and in part contribute to the acquisition community's procurement planning for contracts awarded through the SBA's 8(a) Program. Section 124.506(a) is further amended to correct the identifier of a referenced example that was indirectly changed by the re-designating of paragraphs within § 124.506(a).

Section 125.2 is revising acquisition-related dollar thresholds the Federal agencies use for determining when the procuring activities must coordinate review of its agencies' acquisition strategies with the agencies' respective small business specialists (SBSs), Offices of Small Disadvantaged Business Utilization (OSDBUs), and the SBA's procurement center representatives (PCRs).

Section 125.3 provides the statutory thresholds for the submission of subcontracting plans by other than small business concerns awarded contracts offering subcontracting possibilities. Only one threshold for contracts and modifications in excess of \$500,000 for procurements that are for other than construction of public facilities, received an inflationary adjustment under the FAR; section 125.3 reflects that change.

SBA is adding a paragraph at § 125.7 that provides an explanation of the inflationary adjustments as applied to regulations governing SBA's Government Contracting Assistance Programs.

The SDVO SBC Program regulations at § 125.20 contain statutory acquisition-related dollar thresholds for competing manufacturing and "all other" requirements, as explained elsewhere in the preamble. Only the threshold of \$5,000,000, for competing manufacturing procurements is being revised to reflect the inflationary adjustment made in the FAR.

The SBA is amending § 126.601 by adding a new paragraph to advise the users about the inflationary adjustments for the HUBZone Program's competitive thresholds that are used to determine if procurements are to be competed among qualified HUBZone firms or awarded as HUBZone sole-source contracts. The amendments to § 126.612 reflect the actual revised thresholds, each of which establishes a dollar value that is utilized by the Federal procuring agencies for determining competitive decisions for procurements that are limited to participation by qualified HUBZone firms.

III. Justification for Publication as an Interim Final Status Rule

In general, SBA publishes a rule for public comment before issuing a final rule in accordance with the Administrative Procedure Act (APA) and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The APA provides an exception to this standard rulemaking process where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In the present case, the SBA notes that Public Law 108-375, 41 U.S.C. 431a, requires the FAR Council to take responsibility for adjusting each acquisition-related dollar threshold provided by law and publish a notice of the adjusted dollar thresholds in the **Federal Register**. These actions have been completed and a final rule with an immediate effective date was published in the **Federal Register** on September 28, 2006, 71 FR 57363. Small business programs within the SBA's 8(a) Business Development, Government Contracting, and HUBZone Programs codified within Title 13, Parts 124, 125, and 126 contain acquisition-related dollar thresholds subject to inflationary adjustments that are currently codified in the FAR. This interim final rule is amending SBA's regulations to acknowledge and implement the adjustments that are codified within the FAR. The SBA is not establishing new or differing acquisition-related dollar thresholds with this interim final rule. Rather, SBA is merely amending its regulations to advise the users of SBA's regulations of the inflationary adjustments to SBA's small business programs every five years. Immediate implementation of the interim final rule is needed to ensure a consistency

between the SBA's regulations and the FAR for the acquisition-related dollar thresholds governing small business contracting opportunities. Consequently, SBA believes it is unnecessary to publish this rule as a proposed rule because it is beneficial to the public and acquisition communities that the regulations governing the SBA's small business programs are made consistent through implementing this rule promptly. Comments may be offered by the public and will be reviewed by the SBA. Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule as quickly as possible.

IV. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that "publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3) SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in Section III, "Justification for Publication as Interim Final Status Rule", SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date. Nonetheless, the public may provide comments to SBA by the deadline for comments. SBA will review any comments received.

V. Compliance With Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under E.O. 12866.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purpose of E.O. 13132, SBA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act

Because this rule is an interim final rule, there is no requirement for SBA to prepare an Initial Regulatory Flexibility Act analysis. The RFA requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule the agency must prepare analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required.

List of Subjects

13 CFR Part 124

Administrative practice and procedure, Government procurement, Hawaiian Natives, Indians—business and finance, Minority business, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements Small businesses.

■ For the reasons stated in the preamble, the Small Business Administration amends 13 CFR Parts 124, 125 and 126 as follows:

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATION

■ 1. The authority citation for 13 CFR Part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j) 637(a), 637(d) and Public Law 99–661, Public Law 100–656, sec. 1207, Public Law 100–656, Public Law 101–37, Public Law 101–574, and 42 U.S.C. 9815.

Subpart A—8(a) Business Development

§ 124.506 [Amended]

■ 2. Amend § 124.506 as follows:

■ a. In § 124.506 redesignate paragraphs (a)(1) through (4) as paragraphs (a)(2) through (5) and add new paragraph (a)(1) to read as set forth below.

■ b. Amend newly designated paragraph (a)(2)(ii) by removing “\$5,000,000” and adding in its place “\$5,500,000”.

■ c. Amend newly designated paragraph (a)(2)(ii) by removing “\$3,000,000” and adding in its place “\$3,500,000”.

■ d. Amend newly designated paragraph (a)(4) by removing “\$2.7 million” and adding in its place “\$3.4 million”.

■ e. Amend newly designated paragraph (a)(4) by removing “\$3.1 million” and adding in its place “\$3.7 million”.

§ 124.506 At what dollar threshold must an 8(a) procurement be competed among eligible Participants?

(a) * * *

(1) The Federal Acquisition Regulatory Council (FAR Council) has the responsibility of adjusting each acquisition-related dollar threshold on October 1, of each year that is evenly divisible by five. Acquisition-related dollar thresholds are defined as dollar thresholds that are specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency as determined by the FAR Council. 41 U.S.C. 431a(c). Part 124, Subpart A, 8(a) Business Development, contains acquisition-related dollar thresholds subject to inflationary adjustments. The FAR Council shall publish a notice of the adjusted dollar thresholds in the **Federal Register**. The adjusted dollar thresholds shall take effect on the date of publication.

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PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 3. The authority citation for 13 CFR Part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644 and 657(f).

■ 4. Amend § 125.2 as follows:

■ a. Amend paragraph (b)(2)(i)(A) by removing “\$7” and adding in its place “\$7.5”;

■ b. Amend paragraph (b)(2)(i)(B) by removing “\$5” and adding in its place “\$5.5”;

■ c. Amend paragraph (d)(5)(i)(A) by removing “\$75” and adding in its place “\$86”;

■ d. Revise paragraph (d)(5)(i)(B) to read as follows:

§ 125.2 Prime contracting assistance.

* * * * *

(d) * * *

(5) * * *

(i) * * *

(B) Benefits equivalent to 5 percent of the contract or order value (including options) or \$8.6 million, whichever is greater, where the contract or order value exceeds \$86 million.

* * * * *

§ 125.3 [Amended]

■ 5. Amend § 125.3(a) as follows:

■ a. Amend paragraph (a) by removing “\$500,000” and adding in its place “\$550,000”;

■ b. Amend paragraph (c)(1) by removing “\$500,000” and adding in its place “\$550,000”.

■ 6. Add § 125.7 to read as follows:

§ 125.7 Acquisition-related dollar thresholds.

The Federal Acquisition Regulatory Council (FAR Council) has the responsibility of adjusting each acquisition-related dollar threshold on October 1, of each year that is evenly divisible by five. Acquisition-related dollar thresholds are defined as dollar thresholds that are specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency as determined by the FAR Council. 41 U.S.C. 431a(c). Part 125, Government Contracting Programs, contains acquisition-related dollar thresholds subject to inflationary adjustments. The FAR Council shall publish a notice of the adjusted dollar thresholds in the **Federal Register**. The adjusted dollar thresholds shall take effect on the date of publication.

Subpart C—Contracting With SDVO SBCs

§ 125.20 [Amended]

■ 7. Amend paragraph (b)(1) of § 125.20 by removing “\$5,000,000” and adding in its place “\$5,500,000”.

PART 126—HUBZONE PROGRAM

■ 8. The authority citation for 13 CFR Part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

Subpart F—Contractual Assistance

■ 9. Amend § 126.601 to redesignate paragraphs (a) through (e) as paragraphs (b) through (f) and add new paragraph (a) to read as follows:

§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?

(a) The Federal Acquisition Regulatory Council (FAR Council) has the responsibility of adjusting each acquisition-related dollar threshold on October 1 of each year that is evenly divisible by five. Acquisition-related dollar thresholds are defined as dollar thresholds that are specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency as determined by the FAR Council. 41 U.S.C. 431a(c). Part 126, Subpart F, Contract Assistance, contains acquisition-related dollar thresholds subject to inflationary adjustments. The FAR Council shall publish a notice of the adjusted dollar thresholds in the **Federal Register**. The adjusted dollar thresholds shall take effect on the date of publication.

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§ 126.612 [Amended]

■ 10. Amend § 126.612 as follows:

■ A. Amend paragraph (b)(1) by removing “\$5,000,000” and adding in its place “\$5,500,000”.

■ B. Amend paragraph (b)(2) by removing “\$3,000,000” and adding in its place “\$3,500,000”.

Dated: August 25, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–21602 Filed 9–11–09; 8:45 am]

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