

personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's 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 will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) *Construction by special trade contractors.* (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's 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 will be subcontracted to concerns that are not HUBZone small business concerns.

(e) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(f)(1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

(g) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

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

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

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.

■ 25. Amend section 52.219–8 by revising the date of the clause; and paragraph (d) to read as follows:

52.219–8 Utilization of small business concerns.

* * * * *

Utilization of Small Business Concerns (JAN 2011)

* * * * *

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application Web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

■ 26. Amend section 52.219–9 by revising the date of the clause and adding paragraph (e)(6) to read as follows:

52.219–9 Small business subcontracting plan.

* * * * *

Small Business Subcontracting Plan (JAN 2011)

* * * * *

(e) * * *

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

* * * * *

[FR Doc. 2010–30560 Filed 12–10–10; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 8, 9, 17, 18, 35, and 41

[FAC 2005–47; FAR Case 2008–032; Item III; Docket 2010–0107, Sequence 1]

RIN 9000–AL69

Federal Acquisition Regulation; Preventing Abuse of Interagency Contracts

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement provisions regarding, the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 requirements for preventing abuse of interagency contracts.

DATES: *Effective Date:* December 13, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before February 11, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–47, FAR Case 2008–032, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2008–032” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2008–032.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2008–032” on your attached document.

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

Instructions: Please submit comments only and cite FAC 2005–47, FAR Case 2008–032, in all correspondence related to this case. All comments received will

be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Lori Sakalos, Procurement Analyst, at (202) 208-0498. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-47, FAR Case 2008-032.

SUPPLEMENTARY INFORMATION:

A. Background

Interagency acquisitions offer important benefits to Federal agencies, including economies and efficiencies and the ability to leverage resources. This interim rule, which implements section 865 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009, is designed to ensure these benefits are consistently achieved. The rule strengthens FAR subpart 17.5, Interagency Acquisitions, by—

- Broadening the scope of coverage to address all interagency acquisitions (with limited exceptions), rather than just those conducted under the Economy Act (31 U.S.C. 1535), in recognition that an increasing number of interagency acquisitions are conducted under other authorities;
- Requiring agencies to support the decision to use an interagency acquisition with a determination that such action is the “best procurement approach”;
- Directing that assisted acquisitions be accompanied by written agreements between the requesting agency and the servicing agency documenting the roles and responsibilities of the respective parties, including the planning, execution, and administration of the contract;
- Requiring the development of business cases to support the creation of multi-agency contracts. The Office of Management and Budget (OMB) is developing additional guidance on the use of business cases; once the guidance is issued, it will be referenced in the FAR; and
- Requiring the senior procurement executive for each executive agency to submit an annual report on interagency acquisitions to the Director of OMB, in accordance with section 865(c) of Public Law 110-417.

The interim rule clarifies the meaning of “interagency acquisition,” “direct acquisition,” and “assisted acquisitions” and moves the terms from FAR subparts 4.6 and 17.5 to FAR part 2. It also amends FAR subpart 8.4, Federal

Supply Schedules, to add a cross reference to the requirements in subpart 17.5 for orders over \$500,000 (a threshold established by statute).

In developing the rule, the Councils reviewed interagency guidance issued by the Office of Federal Procurement Policy at http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf.

The OMB guidance addresses procedures for the use of interagency acquisitions to maximize competition, deliver best value to executive agencies, and minimize waste, fraud, and abuse. In addition, as required by section 865(a), training on interagency acquisitions has been made available through the Federal Acquisition Institute (see <http://www.fai.gov/IAA/launchpage.htm>).

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional requirements on small businesses. The rule is strengthening interagency acquisition procedures to achieve efficiencies and economies of scale across the Federal Government. The rule also requires agencies, in the multi-agency contract business-case analysis, to consider strategies to ensure small business participation during acquisition planning. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-47, FAR Case 2008-032) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management

and Budget under 44 U.S.C. chapter 35, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 865(b) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) required the publication of the regulations within one year after enactment, October 14, 2008. However, pursuant to 41 U.S.C. 418b and FAR 1.501-3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 4, 8, 9, 17, 18, 35, and 41

Government procurement.

Dated: November 24, 2010.

Millisa Gary,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 8, 9, 17, 18, 35, and 41 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 8, 9, 17, 18, 35, and 41 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by—

■ a. Adding, in alphabetical order, the definitions “Assisted acquisition”, “Direct acquisition”, and “Interagency acquisition”;

■ b. Amending the definition “Multi-agency contract (MAC)” by removing “17.500(b)” and adding “17.502-2” in its place; and

■ c. Adding, in alphabetical order, the definitions “Requesting agency”, and “Servicing agency”.

The added text reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Assisted acquisition means a type of interagency acquisition where a servicing agency performs acquisition activities on a requesting agency’s behalf, such as awarding and

administering a contract, task order, or delivery order.

* * * * *

Direct acquisition means a type of interagency acquisition where a requesting agency places an order directly against a servicing agency's indefinite-delivery contract. The servicing agency manages the indefinite-delivery contract but does not participate in the placement or administration of an order.

* * * * *

Interagency acquisition means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency), by an assisted acquisition or a direct acquisition. The term includes—

(1) Acquisitions under the Economy Act (31 U.S.C. 1535); and

(2) Non-Economy Act acquisitions completed under other statutory authorities (e.g., General Services Administration Federal Supply Schedules in subpart 8.4 and Governmentwide acquisition contracts (GWACs)).

* * * * *

Requesting agency means the agency that has the requirement for an interagency acquisition.

* * * * *

Servicing agency means the agency that will conduct an assisted acquisition on behalf of the requesting agency.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.601 [Amended]

■ 3. Amend section 4.601 by removing the definitions “Assisted acquisition”, “Direct acquisition”, “Requesting agency”, and “Servicing agency”.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 4. Amend section 8.404 by revising paragraph (b) to read as follows:

8.404 Use of Federal Supply Schedules.

* * * * *

(b)(1) The contracting officer, when placing an order or establishing a BPA, is responsible for applying the regulatory and statutory requirements applicable to the agency for which the order is placed or the BPA is established. The requiring agency shall provide the information on the applicable regulatory and statutory requirements to the contracting officer responsible for placing the order.

(2) For orders over \$500,000, see subpart 17.5 for additional requirements

for interagency acquisitions. For example, the requiring agency shall make a determination that use of the Federal Supply Schedule is the best procurement approach, in accordance with 17.502–1(a).

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

9.106–3 [Amended]

■ 5. Amend section 9.106–3 by removing the word “accommodated” and adding the words “accommodated (also see subpart 17.5)” in its place.

PART 17—SPECIAL CONTRACTING METHODS

■ 6. Revise subpart 17.5 to read as follows:

Subpart 17.5—Interagency Acquisitions

Sec.

17.500 Scope of subpart.

17.501 General.

17.502 Procedures.

17.502–1 General.

17.502–2 The Economy Act.

17.503 Ordering procedures.

17.504 Reporting requirements.

17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to all interagency acquisitions under any authority, except as provided for in paragraph (b) of this section.

(b) This subpart does not apply to orders of \$500,000 or less issued against Federal Supply Schedules.

17.501 General.

(a) Interagency acquisitions are commonly conducted through indefinite-delivery contracts, such as task- and delivery-order contracts. The indefinite-delivery contracts used most frequently to support interagency acquisitions are Federal Supply Schedules (FSS), Governmentwide acquisition contracts (GWACs), and multi-agency contracts (MACs).

(b) An agency shall not use an interagency acquisition to circumvent conditions and limitations imposed on the use of funds.

(c) An interagency acquisition is not exempt from the requirements of subpart 7.3, Contractor Versus Government Performance.

(d) An agency shall not use an interagency acquisition to make acquisitions conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under title 40, United States Code, “Public Buildings, Property

and Works” and title III of the Federal Property and Administrative Services Act of 1949.)

17.502 Procedures.

17.502–1 General.

(a) *Determination of best procurement approach*—(1) *Assisted acquisitions*.

Prior to requesting that another agency conduct an acquisition on its behalf, the requesting agency shall make a determination that the use of an interagency acquisition represents the best procurement approach. As part of the best procurement approach determination, the requesting agency shall obtain the concurrence of the requesting agency's responsible contracting office in accordance with internal agency procedures. At a minimum, the determination shall include an analysis of procurement approaches, including an evaluation by the requesting agency that using the acquisition services of another agency—

(i) Satisfies the requesting agency's schedule, performance, and delivery requirements (taking into account factors such as the servicing agency's authority, experience, and expertise as well as customer satisfaction with the servicing agency's past performance);

(ii) Is cost effective (taking into account the reasonableness of the servicing agency's fees); and

(iii) Will result in the use of funds in accordance with appropriation limitations and compliance with the requesting agency's laws and policies.

(2) *Direct acquisitions*. Prior to placing an order against another agency's indefinite-delivery vehicle, the requesting agency shall make a determination that use of another agency's contract vehicle is the best procurement approach. At a minimum, the determination shall include an analysis, including factors such as:

(i) The suitability of the contract vehicle;

(ii) The value of using the contract vehicle, including—

(A) The administrative cost savings from using an already existing contract;

(B) Lower prices, greater number of vendors, and reasonable vehicle access fees; and

(iii) The expertise of the requesting agency to place orders and administer them against the selected contract vehicle throughout the acquisition lifecycle.

(b) *Written agreement on responsibility for management and administration*—(1) *Assisted acquisitions*. (i) Prior to the issuance of a solicitation, the servicing agency and the requesting agency shall both sign a

written interagency agreement that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for acquisition planning, contract execution, and administration and management of the contract(s) or order(s). The requesting agency shall provide to the servicing agency any unique terms, conditions, and applicable agency-specific statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract; for patent rights, *see* 27.304–2. In preparing interagency agreements to support assisted acquisitions, agencies should review the Office of Federal Procurement Policy guidance, *Interagency Acquisitions*, available at http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf.

(ii) Each agency's file shall include the interagency agreement between the requesting and servicing agency, and shall include sufficient documentation to ensure an adequate audit consistent with 4.801(b).

(2) *Direct acquisitions.* The requesting agency administers the order; therefore, no written agreement with the servicing agency is required.

17.502–2 The Economy Act.

(a) The Economy Act (31 U.S.C. 1535) authorizes agencies to enter into agreements to obtain supplies or services by interagency acquisition. The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of more specific authority are 40 U.S.C. 501 for the Federal Supply Schedules (subpart 8.4), and 40 U.S.C. 11302(e) for Governmentwide acquisition contracts (GWACs).

(c) *Requirements for determinations and findings.* (1) Each Economy Act order to obtain supplies or services by interagency acquisition shall be supported by a determination and findings (D&F). The D&F shall state that—

(i) Use of an interagency acquisition is in the best interest of the Government; and

(ii) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

(2) If the Economy Act order requires contract action by the servicing agency, the D&F must also include a statement

that at least one of the following circumstances applies:

(i) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services.

(ii) The servicing agency has the capability or expertise to enter into a contract for such supplies or services that is not available within the requesting agency.

(iii) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

(3) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the Federal Acquisition Regulation, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

(4) The requesting agency shall furnish a copy of the D&F to the servicing agency with the order.

(d) *Business-case analysis requirements for multi-agency contracts.* In order to establish a multi-agency contract in accordance with Economy Act authority, a business-case analysis must be prepared by the servicing agency. The business-case analysis shall—

(1) Consider strategies for the effective participation of small businesses during acquisition planning (*see* 7.103(s));

(2) Detail the administration of such contract, including an analysis of all direct and indirect costs to the Government of awarding and administering such contract;

(3) Describe the impact such contract will have on the ability of the Government to leverage its purchasing power, *e.g.*, will it have a negative effect because it dilutes other existing contracts;

(4) Include an analysis concluding that there is a need for establishing the multi-agency contract; and

(5) Document roles and responsibilities in the administration of the contract.

(e) *Payment.* (1) The servicing agency may ask the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. Adjustment on the basis of actual costs shall be made as agreed to by the agencies.

(2) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the

supplies or services have been furnished.

(3) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.

(4) If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

17.503 Ordering procedures.

(a) Before placing an order for supplies or services with another Government agency, the requesting agency shall follow the procedures in 17.502–1 and, if under the Economy Act, also 17.502–2.

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (*see* 17.502–2(e) for Economy Act orders); and

(5) Acquisition authority as may be appropriate (*see* 17.503(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F (other than the requesting agency's D&F required in 17.502–2(c)) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing information or special contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including—

(j) Having adequate statutory authority for the contractual action; and

(ii) Complying fully with the competition requirements of part 6 (see 6.002). However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for FAR agencies by part 31), and that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See 35.017; see also 6.302 for procedures to follow where using other than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

17.504 Reporting requirements.

The senior procurement executive for each executive agency shall submit to the Director of OMB an annual report on interagency acquisitions, as directed by OMB.

PART 18—EMERGENCY ACQUISITIONS

■ 7. Amend section 18.113 by revising the section heading to read as follows:

18.113 Interagency acquisitions.

* * * * *

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

■ 8. Amend section 35.017–3 by revising the second sentence of paragraph (b) to read as follows:

35.017–3 Using an FFRDC.

* * * * *

(b) * * * The nonsponsoring agency is responsible for making the determination required by 17.502–2(c) and providing the documentation required by 17.503(e). * * *

PART 41—ACQUISITION OF UTILITY SERVICES

■ 9. Revise section 41.206 to read as follows:

41.206 Interagency agreements.

Agencies shall use interagency agreements (e.g., consolidated purchase, joint use, or cross-service agreements) when acquiring utility service or facilities from other Government agencies and shall comply with the policies and procedures at 17.502–2, The Economy Act.

[FR Doc. 2010–30561 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 19, and 52

[FAC 2005–47; FAR Case 2009–019; Item IV; Docket 2010–0108, Sequence 1]

RIN 9000–AL77

Federal Acquisition Regulation; Small Disadvantaged Business Self-Certification

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to incorporate changes made by the Small Business Administration (SBA) to its Small Disadvantaged Business (SDB) Program.

DATES: *Effective Date:* December 13, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before February 11, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–47, FAR Case 2009–019, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–019” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2009–019.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR

Case 2009–019” on your attached document.

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

Instructions: Please submit comments only and cite FAC 2005–47, FAR Case 2009–019, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–47, FAR Case 2009–019.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the FAR to allow subcontractors on Federal contracts to self-represent their status as SDBs to prime contractors. SBA published an interim final rule in the **Federal Register** at 73 FR 57490, October 3, 2008, to allow SDB subcontractors to provide written statements to prime contractors representing in good faith their status as an SDB concern for the purposes of subcontract awards under Federal prime contracts. Under SBA's previous regulation, only those firms that were certified by SBA as SDBs could participate as SDBs for Federal prime contract and subcontract opportunities. SBA stated that, effective October 3, 2008, it would no longer serve as a source for SDB certification for firms seeking to establish themselves as SDBs. The revision to SBA's regulation removed any uncertainty regarding SDB subcontractors' ability to self-represent themselves in good faith to prime contractors.

In order to maintain consistency between the SBA regulations and the FAR, the Councils are amending the FAR as outlined below:

- FAR 2.101, Definitions: The term “small disadvantaged business concern” is revised to be consistent with 13 CFR part 124, which continues to recognize small business concerns that have been certified by SBA, and to add language that allows small business concerns to self-represent their status as SDBs for subcontracts.

- FAR 19.301–1, Representations by the offeror: Amended to update citations.

- FAR 19.703, Eligibility requirements for participating in the